

Doing Business in the Middle East: A Primer for U.S. Companies

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Doing Business in the Middle East: A Primer for U.S. Companies

John H. Donboli† & Farnaz Kashefi††

Introduction	414
I. The Middle East: A Brief Historical Survey of a Rich and Dynamic Region	415
A. The Birth of Civilization and the World's Three Major Religions	415
B. Islam's Enduring Mark on Culture, Traditions, and Modern Day Business Practices	417
C. Globalization and Islam: The Impact on the Development of the Region's Governments, Economies and Legal Systems	420
II. The Middle East in the 21st Century: A Burgeoning Climate for Investment and Trade Opportunities	426
A. The Gulf Cooperative Council: The Archetype for Integration, Cooperation, and Effective Harmonization of Investment and Trade Policies	426
1. <i>Bahrain</i>	428
2. <i>Saudi Arabia</i>	431
3. <i>Kuwait</i>	434
4. <i>Qatar</i>	437
5. <i>United Arab Emirates</i>	438
6. <i>Oman</i>	441
B. Beyond the Gulf Cooperative Council: A Look at Jordan, Egypt, and Libya	444
1. <i>Jordan</i>	444
2. <i>Egypt</i>	447
3. <i>Libya</i>	450
C. An Examination of Limited, Yet Lucrative Opportunities in a Sanctioned and Steadily Growing Iranian Economy	451
1. <i>Iran</i>	451
III. The Future of U.S. Business in a Promising Region and a Global Economy	455
A. Expanding Business Interests Through Mutual Understanding and Credibility	455

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Introduction

The Middle East is situated in a strategic global position featuring many dynamic trade and investment opportunities. The region is primarily known as one of the world's largest oil and natural gas reserves, yet governments are attempting to reduce their economic dependency on oil revenues by instituting policies intended to attract foreign investment.¹ As countries in the region attempt to transform their oil-based economies into information and service-based economies, they must reach out to world partners to encourage investment.² Essentially, the conglomeration of factors such as a regional surge of economic diversification, privatization of traditionally state-owned business, population growth, regional integration efforts, and reconstruction efforts in Iraq are major sources of potential economic opportunity in the Middle East.

Middle-Eastern leaders recognize that they must diversify their economies away from a nearly complete dependence on oil and state-sponsored subsidies. As a result, recent legislation in many Middle Eastern countries aims to privatize traditionally state-owned businesses and attract foreign direct investments.³ The World Bank estimates the need for nearly \$3.1 billion a year in private investments to realize privatization efforts and infrastructure projects in the Middle East.⁴

Another factor that gives rise to a demand for foreign investments has been the steady population growth in the region. Thirty-five percent of the population is below the age of fifteen, and the creation of jobs in the private sector has consistently expanded the labor force.⁵ The marriage of Arab youth and Western pop culture through the media, including the Internet, also continues to fuel an increased demand for American products in the region.

Presently, the Gulf Cooperation Council (GCC) serves as a model for the later developing economies in the region due to the consolidation of trade liberalization reforms implemented to attract and sustain foreign

1. See, e.g., *Iran's President Khatami Submits His Last Budget Bill to Majlis*, BBC MONITORING INT'L REP., Jan. 10, 2005 (quoting Pres. Khatami as saying, "Economic transformation and national development . . . requires knowledge and experience, as well as suitable infrastructure and strategies. By relying only on oil revenues and spending them on our daily needs . . . [w]e will not be able to generate economic dynamism").

2. See *id.*

3. See Interview: George Abed, MIDDLE EAST ECON. DIG., Sept. 19, 2003, at 12 (discussing privatization in Saudi Arabia); Ugo Fasano & Zubair Iqbal, *GCC Countries Face Fundamental Choices as they Head for Monetary Union*, 39 IMF FIN. & DEV. Q. (Dec. 2002), available at <http://www.imf.org/external/pubs/ft/fandd/2002/12/fasano.htm> (discussing privatization in the GCC).

4. Emad Tinawi, *Middle Eastern Law*, 31 INT'L LAW. 541, 541-44 (1997) (discussing recent legal and political developments that in turn will shape the economic outlook for countries in the Middle East).

5. The World Bank Group, *2004 World Development Indicators* 256 (2004), available at <http://www.worldbank.org/data/wdi2004/tables/table5-1.pdf>; see also *id.* at 40, available at <http://www.worldbank.org/data/wdi2004/tables/table2-1.pdf> (the average annual population growth rate for the Middle East and North Africa between 1980 and 2002 was estimated at 2.6%, following closely Sub-Saharan Africa, which exhibited the highest growth rate in the world at 2.7%).

trade and investment. Upon recognition of the need to enhance regional cooperation and integration in the region, the GCC was established in the early 1980s to better facilitate and enhance foreign investment amongst member states.⁶ The GCC is comprised of six member states: (1) Saudi Arabia; (2) Kuwait; (3) Bahrain; (4) Qatar; (5) Oman; and (6) the United Arab Emirates. Since its inception in the early 1980s, the GCC has taken significant steps toward economic integration, convergence of rules governing investment, trade, labor, and external tariffs, and establishment of a monetary union.⁷ As a result, the GCC has become America's fifth largest trading partner and exports to these six nations make it the largest market in the Near East and North Africa for the United States.⁸

Additionally, the western presence in Iraq due to the establishment of a new government and the general easing of trade sanctions promise new investment opportunities in that country's reconstruction. Moreover, the potential for trade and investment in Libya following the termination of the United States' trade sanctions⁹ will increase investment opportunities in this and other developing economies.

Fostering trade and investment in the region is fundamental to restoring U.S. diplomacy and stability in the Middle East and ultimately bolstering the U.S. economy. For American businesses to maintain their status as the largest trading partner to the GCC and seize mounting business opportunities in developing Middle Eastern economies, it is essential for U.S. companies to understand the fundamental legal and practical implications of doing business in the region. Understanding your Middle Eastern business partner or client creates a higher level of credibility and respect. American companies must also understand the Middle East and acquaint themselves with the region's rich history, culture, and religion.

I. The Middle East: A Brief Historical Survey of a Rich and Dynamic Region

A. The Birth of Civilization and the World's Three Major Religions

Webster's Third New International Dictionary defines the "Middle East" as the region originally included in the Ottoman Empire, spanning Southwestern Asia and Northeastern Africa and currently extending from Libya to Afghanistan.¹⁰ The Middle East is not a continent but a geopolitical¹¹

6. See *Gulf Leaders Pledge Economic Unity at GCC Summit*, AL-BAWABA, Dec. 23, 2003.

7. Fasano & Iqbal, *supra* note 3.

8. American Business Council of the Gulf Countries [hereinafter ABCGC], *The Gulf: Competition for a Key Market*, available at <http://www.abcgcc.org/thegulf.htm>.

9. *From Green Book to Greenbacks*, ECONOMIST (U.S. Ed.), May. 1, 2004, available at http://www.economist.com/business/displayStory.cfm?story_id=2634077.

10. See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1430 (1993).

11. The geopolitical term "Middle East" was first coined in 1902 by U.S. naval officer Alfred Thayer Mahan, and originally referred to the Asian region south of the Black Sea between the Mediterranean Sea to the west and India to the east. Microsoft Encarta Online Encyclopedia, *Middle East* (2005), at http://encarta.msn.com/encyclopedia_761579298/Middle_East.html (last visited Mar. 23, 2005).

and cultural term that refers to the countries nestled between Africa and Asia. Historically, the actual boundaries of the region have been disputed, but typically the western half of the region consists of the countries in the southeastern Mediterranean along the Nile delta or present day Egypt and extending east through present day Iran.¹² The Middle East generally includes the countries of Libya, Egypt, Turkey, Jordan, Lebanon, Syria, Palestine (currently the Israeli-occupied Gaza Strip and West Bank), Israel, Cyprus, Bahrain, Saudi Arabia, United Arab Emirates, Oman, Kuwait, Qatar, Iraq, Afghanistan, and Iran.¹³ Despite its fragmentation into numerous nation-states and its absorption of various peoples, the region shares a collective pride in a long history, home to some of the world's most influential empires, birthplace of monotheism, and fundamental contributions to the development of human civilization.

The early marks of civilization once decorated the lower valley and delta of the Nile in Egypt and the Tigris and Euphrates rivers in current day Iraq and later, the birth of the world's three major monotheistic religions, Judaism (thirteenth century B.C.), Christianity (first century to fourth century A.D.), and Islam (seventh century A.D.). The dynamic civilization that sprung from the lush plateaus of Mesopotamia around 5000 B.C. is among the oldest and most influential in the world.¹⁴ At that time, the region witnessed the earliest forms of trade, currency, and banking and the advent of fundamental tools such as the wheel, plow, and cuneiform writing. The people of the Middle East are also responsible for the development of the earliest alphabets and law codes, and are credited with the landmark contribution to mathematics through the development of Arabic numerals.¹⁵ Similarly, words essential to science and technology such as "algebra" and "alkaline" also share Middle Eastern origins.¹⁶

Over the years the Persian, Roman, Greek, and Ottoman empires ruled northern and southern Mesopotamia,¹⁷ and consequently the profound philosophical and scientific achievements of these empires impacted the Middle East.¹⁸ Following the dawn of Christianity, the Persian Empire firmly established its capital not far from present day Baghdad.¹⁹ The warfare between the Persian and Roman empires in the sixth century resulted in the emergence and development of trading centers along the caravan

12. BERNARD LEWIS, *THE MIDDLE EAST: A BRIEF HISTORY OF THE LAST 2,000 YEARS* 21 (Scribner 1995).

13. The countries that actually comprise the Middle East are somewhat disputed. A liberal map of the region may also include a number of bordering North African countries such as Algeria, Yemen, and Morocco, as well as Pakistan in the east. For purposes of this Article, countries from the region were randomly selected to give a broad picture of law, economics, and development in the region.

14. JOSEPH TRAGERT, *UNDERSTANDING IRAQ* 23-24 (2003).

15. *Id.* at 24.

16. See *id.* at 25. The "al" in Arabic means "the" and is very common in scientific words.

17. LEWIS, *supra* note 12, at 21-23.

18. *Id.* at 28-29.

19. *Id.* at 22.

route between the Mediterranean and the East.²⁰ In the Middle Ages, the region entered the arena of early international commerce and trade when the silk trail was woven through the landscape of the Middle East and connected the peoples and goods of North Africa, Europe, and Asia.²¹ A natural consequence of such developments was a relatively lucrative stream of commerce, trade, and exchange in currency,²² epitomized in the oldest surviving clay tablets that reveal detailed commercial transactions, taxation systems, negotiations, property listings, and leases.²³ Commerce and trade have since been central to the growth and prosperity of peoples in the Middle East and is thus respected as a means of ensuring economic viability.

Today the remnants of the vast empires that at times ruled the region have given rise to a variety of distinctive peoples and cultures that proudly trace their heritage back to the Persian Empire in the northeast, the Egyptians in the northwest, Jerusalem in the west, and the Arab conquests across the entire region around the seventh and eighth centuries A.D.²⁴ Consequently, the three major ethnic groups in the modern day region—the Arabs, the Persians, and the Turks—have worked hard to preserve the histories of their distinct ethnic heritage, languages,²⁵ literature, and culture.²⁶ Yet the common thread of Islam has connected the distinctive peoples and borders of the region for centuries. Since more than 90% of the people in the region are Muslims, Islam continues to play a profound role in the daily lives of almost all aspects of Middle Eastern life.

B. Islam's Enduring Mark on Culture, Traditions, and Modern Day Business Practices

Islam was founded by the prophet Muhammad who lived in the early seventh century A.D. in what we now know as modern day Saudi Arabia.²⁷ The word of God or "Allah"²⁸ as communicated to the prophet Muhammad in the Holy Quran, the Muslim holy book, acknowledges earlier Jewish and Christian monotheism and prophecy, but distinguishes itself as representing the final word of God.²⁹ Today there are more than one billion Mus-

20. *Id.* at 24.

21. For a discussion of the silk trail, see generally *THE SILK ROADS: HIGHWAYS OF CULTURE AND COMMERCE* (Vadime Elisseff ed., 2000).

22. LEWIS, *supra* note 12, at 61. Exchange between the Byzantine and Persian currencies led to the later development of extensive systems of currency exchange, including the development of exchange rates and currency converters in Islamic states. *Id.*

23. TRAGERT, *supra* note 14, at 24; M. Isabel Panosa, *The Beginnings of the Written Culture in Antiquity*, *REVISTA DIGITAL D'HUMANITATS* 1, 5 (May 2004), at <http://www.uoc.edu/humfil/articles/eng/panosa0304/panosa0304.pdf>.

24. LEWIS, *supra* note 12, at 28-31.

25. *See id.* at 247-48, 327. Arabic, Farsi, and Turkish are the three predominant languages in the region, followed by Kurdish, Hebrew, and Armenian. *Id.* at 247-48.

26. *See id.* at 327.

27. For a detailed history of the life of the prophet Muhammad and the legacy of his social and legal traditions, see generally ANDREW RIPPIN, *MUSLIMS: THEIR RELIGIOUS BELIEFS AND PRACTICES* 30-43 (1990).

28. *Id.* at 15 (defining "Allah" as the Arabic term for "God").

29. For a discussion of the importance of the Quran in Islam and its treatment of earlier Jewish and Christian sources, see *id.* at 14-29.

lims, comprising nearly one-sixth of the world population.³⁰ Not all Middle Eastern countries are Islamic nations nor have they all built Islamic legal systems or governments.³¹ Yet it is fair to say that the majority of nation-states in the region have interwoven Islamic law into their legal frameworks, ranging from a very limited influence to complete supremacy of laws governed by Islamic principles.³² Therefore, regardless of where that nation-state lies in the spectrum, Islamic principles are alive and well in the present social state of most Middle Eastern nations. Consequently, a basic understanding of the general history of Islamic principles is essential to understanding the region as a whole.

Today, many Westerners deeply misconstrue the foundations and fundamental principles of the Islamic faith due to distortions propagandized through terrorism, fundamentalism, and the media. The true foundation of Islam and its birth within the historical context of the region in the seventh century are essential to painting a more accurate picture of the faith and its enduring mark on culture, traditions, and modern day laws and business practices in the Middle East.

The common misperception that Islam is rigid has contributed to the popular myth that Islamic law is inherently unsuitable for modern commercial transactions.³³ However, Islamic law has provided a stable foundation for the incorporation of business practices and transactions for centuries in the Middle East.³⁴ Nevertheless, globalization³⁵ has instigated necessary reevaluations of outdated laws and incorporated timely reforms of all world legal systems and institutions, including many Islamic systems throughout the Middle East.

Presently, Islamic law is one of the world's major non-Western legal systems.³⁶ There is, however, no single unified Islamic legal system; like the common law, it varies from country to country.³⁷ Generally, common amongst modern day Middle Eastern legal systems today is a conglomeration of Islamic law principles, commonly referred to as the "Shari'a," and

30. ISLAMIC LAW AND LEGAL THEORY, at xv (Ian Edge ed., 1996).

31. For purposes of this Article, Islamic countries are those with a Muslim population of 66% or higher. See Raj Bhala, *Poverty, Islam and Doha: Unmet Challenges Facing American Trade Law*, 36 INT'L LAW. 159, 184 n.136 (2002). Accordingly, the Islamic countries included in the Middle East region are Afghanistan, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Libya, Oman, Qatar, Saudi Arabia, Syria, Turkey, and the United Arab Emirates. The exceptions are Christian Lebanon and Jewish Israel (outside the occupied West Bank and Gaza Strip).

32. The Egyptian legal system has less Islamic influence than many other Islamic states, as opposed to Iran or Saudi Arabia, where there is a far greater supremacy of Islamic laws.

33. Howard L. Stovall, *Arab Commercial Laws into the Future*, 34 INT'L LAW. 839, 841 (2000) (asserting that Islamic law remains relevant to modern day business practices throughout the Middle East, and its importance is increasing in many Islamic states).

34. *Id.*

35. WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 534 (The Riverside Publ'g Co. 1988). Globalization is defined as the act, process, or policy of making something worldwide in scope or application.

36. ISLAMIC LAW AND LEGAL THEORY, *supra* note 30, at xv.

37. *Id.*

European civil law models.³⁸ The Shari'a is a body of commandments, religious and legal, given by God through the prophet Muhammad and documented in the Quran and the "Sunna" or traditions of the Prophet.³⁹ Directly translated, the "Shari'a" means "the right path" or guide for Muslims who wish to live their lives consistent with Islamic principles.⁴⁰

The Quran has also served as a source of principles of justice and was used as a mediation tool by the prophet Muhammad to induce legal settlement amongst Muslims.⁴¹ Yet there are limitations to the application of the Quran to modern day disputes because the laws directly derived from the Quran addressed a limited realm of issues regarding family law (marriage, divorce, and succession), criminal law (adultery, slander, and intoxication), evidence, (the acceptance of witnesses) and certain commercial matters.⁴²

The Sunna, which is the second source of Islamic law, stems from the traditions and precedents set by the behavior of the prophet Muhammad and his family.⁴³ Essential to the formation of Islamic law are the stories regarding matters in which the Prophet was asked to arbitrate disputes and decide questions of law.⁴⁴ Following the Prophet's death the Sunna were collected by various schools of Islamic law. Consequently, the schools that emerged throughout the Middle East compiled a wide array of legal scholarship with variations in the form and accuracy of the collected Hadiths.⁴⁵ Today, there are cultural variations in the legal foundations and role that Islamic laws play within Middle Eastern countries.

Later, the development of Islamic law into the nineteenth century did not reflect a desire to reform the foundation of the law, derived earlier from the Quran and Sunna, to match the times, but to supplement it by way of administrative regulations and amendments. Through Islamic principles of consensus-building and analogy, Islamic jurists fit these regulations within the infrastructure of the Shari'a.⁴⁶ As a result, there are a variety of subtle differences in the interpretations and regulations that supplement Islamic laws across the Middle East, largely due to the breadth of Muslim schools and jurists that sprung from the region following the prophet Muhammad's passing.⁴⁷ For Muslims the fundamental laws are in the

38. *Id.*

39. *Id.* at xvi.

40. *Id.* at xvi-xvii.

41. *Id.*

42. *Id.* at xxii. Commercial matters discussed in the Quran are limited to issues regarding forms of contracts and the prohibition of usury or unearned profit in the form of interest on money or insurance contracts. *See, e.g.,* Quran II:275 ("Those who eat Ribâ (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitân (Satan) leading him to insanity."); II:282 ("When you contract a debt for a fixed period, write it down"), available at <http://www.ummah.org.uk/what-is-islam/quran/noble/subject1.htm> (last visited Feb. 27, 2005).

43. *Id.* at xvii.

44. *Id.*

45. *Id.* at xvii.

46. *Id.* at xvi.

47. *Id.* at xvii.

Quran and Sunna, yet these laws continued to be supplemented and interpreted over time through the work of Islamic jurists and theologians across the Middle East.⁴⁸ Consequently, Muslim states have managed to modify and develop their laws over time in accordance with the Islamic jurisprudence that "the rules change as the times change."⁴⁹

C. Globalization and Islam: The Impact on the Development of the Region's Governments, Economies, and Legal Systems

[T]he meaning and method of [religious] renewal varies with changing historical circumstances. What emerges is the picture of a tradition which, although fixed and stable, is neither stagnant nor monolithic. When the existing conditions and institutions of Islam seemed to warrant it, Muslim reformers have felt free to challenge the blind following of tradition. . . and the Islamic establishment. They claimed their right to engage in independent analysis or interpretation. . . in order to re-form their societies.⁵⁰

The global circulation of goods, services, capital, information, technology, and people has increasingly warranted that Middle Eastern states reduce barriers to their nations' institutions and markets. Additionally, this phenomenon has resulted in a revamping of obsolete laws and promulgation of rules to address new issues. Islamic Middle Eastern nations have reformed their Islamic legal systems to varying degrees since the early seeds of globalization were planted with the influx of western trade and exchange in the early nineteenth century.

From the sixteenth through the nineteenth centuries the Ottoman Empire ruled most of the Middle East.⁵¹ During that time, the region experienced trade, extensive exchange of ideas, and an influx of people from foreign lands. At that time, travel and European imports had the most profound foreign influence in the region.⁵² The Europeans, who often frequented the Middle Eastern marketplace, considered the empire to be a rich and increasingly open market.⁵³ As a result, the desire of European leaders to enhance their trade and dominion in the region led to the push

48. LEWIS, *supra* note 12, at 223.

49. *Id.* at 224.

50. See Bhala, *supra* note 31, at 177 (quoting *Islam and Muslim Politics*, in VOICES OF RESURGENT ISLAM 11-12 (John L. Esposito ed., 1983)). Professor Esposito discusses three categories of response by the Islamic World over the last 100 to 150 years to the perceived Western threat. The first response, also the most conservative, is "Traditional Reformism." *Id.* It calls for full implementation of, and strict adherence to, the *Shari'a*. *Id.* The *Shari'a* is conceived as a body of principles and obligations grounded firmly in the *Quran* and *Sunna*. According to Professor Esposito's Classical Theory of the *Shari'a*, these two are the "fundamental" fronts of the law. *Id.* The Classical or Traditionalist theory places less emphasis on the two additional sources, *Qiyas* (analogical reasoning) and *Ijma* (consensus), which developed over the last 1400 years through the work of the *ulama* (religious scholars) since the Prophet's death in 632 A.D. *Id.*

51. LEWIS, *supra* note 12, at 121.

52. See *id.* Europeans established themselves as colonial rulers as far east as India and Indonesia and, as a result, were able to control the trade between Asia and Europe. *Id.*

53. *Id.* at 128.

for the integration of European principles in the Islamic legal systems.⁵⁴ Consequently, a large part of the Islamic legal order was replaced or supplemented by European-type codes.⁵⁵ This conglomeration of laws was due in part to the European powers' desire to enhance their position in commerce, but also due to a need to fill voids in Islamic trade and finance law.⁵⁶ As a result, the Ottoman government actually welcomed European commercial codes and procedures.⁵⁷ Nevertheless, the Ottomans were diplomatic with regard to their Muslim constituency and carefully added to the basic Islamic legal framework without modifying its actual structure.⁵⁸ From the early nineteenth century to the end of World War II, European commercial and transactional laws mixed with the Islamic legal system.⁵⁹ Despite the extensive transformation of the legal system in the latter areas, European laws did not actually supplant Islamic law, but coexisted pragmatically within the existing legal framework.⁶⁰

These rather open-minded and prestigious members of the Islamic community responded to change and dissent within their community with a sense of flexibility and pragmatism.⁶¹ Such attitudes have roots in the

54. See GEORGE N. SFEIR, *MODERNIZATION OF THE LAW IN ARAB STATES: AN INVESTIGATION INTO CURRENT CIVIL, CRIMINAL AND CONSTITUTIONAL LAW IN THE ARAB WORLD* 25-50 (1998) (discussing the process of modernization in legal systems throughout the Islamic world through the adoption of foreign elements and discourse amongst Islamic scholars).

55. ISLAMIC LAW AND LEGAL THEORY, *supra* note 30, at xx.

56. See SFEIR, *supra* note 54 (discussing both proactive efforts within the Muslim world to modernize its legal code and the legislative consequences of European colonization on the Middle East and Northern Africa).

57. *Id.* at 26-27.

58. ISLAMIC LAW AND LEGAL THEORY, *supra* note 30, at xix-xx.

59. *Id.* at xx. The spectrum of country codes with levels of Islamic law influence vary dramatically across the Middle East. At one end of the spectrum is the minimization of the Islamic law element in certain Islamic countries, specifically in the Egyptian code, which is compiled of a small percentage of updated Islamic laws and what Egypt considers to be the best of the European Civil law. *Id.* At the other end of the spectrum is a nearly "wholesale codification" of Islamic family law principles throughout the Middle East. *Id.* Nevertheless, in most Islamic states, a variety of methods of reforms have attempted to keep to the words of the original texts of the Islamic law while interpreting them more in accordance with the modern requirements. *Id.*

60. *Id.*

61. See Bhala, *supra* note 31, at 178 (contrasting the reactionary nature of "Traditional Reformism," which demands "full implementation of, and strict adherence, to the Shari'a," with "Liberal Reformism," which "accept[s] as a legitimate objective accommodation with what the West have to offer"). The strict traditionalists insist that the Shari'a is a complete system that does not warrant supplementation or modification, *id.*, and some scholars believe such principles have been most recently personified in the practices of the Taliban regime in Afghanistan. See also C. William Thomas, *Gurus and Guerrillas: Religious Fundamentalism and Dispute Resolution*, 4 HARV. NEGOT. L. REV. 115, 116 (1999) (noting that "the Taliban in Afghanistan find inspiration in a fundamentalist interpretation of their . . . religious tradition[]"). In fact, most Islamic societies tolerated radical opinions due to the Muslim philosophy that diversity of opinion within the community was often harmless, if not beneficial. See LEWIS, *supra* note 12, at 228. This followed from the prophet Muhammad's exhortation that "[d]ifference in opinion within my community is a sign of God's mercy." Michael Novak, *Democracy and Islam*, MICHAELNOVAK.NET, at <http://www.michaelnovak.net/Module/Article/ArticleView.aspx?id=42> (June 8, 2004).

ranks of the *madhab*,⁶² or Islamic schools of law, in which people sharing common positions derived from personal legal deductions would gather and deliberate.⁶³ Here the *ulama*,⁶⁴ or religious scholars, based their deliberations and writings on *qiyaas*⁶⁵ and *ijmaa*.⁶⁶ As new situations and issues arose that the Shari'a did not address, it was the jurists' responsibility to make decisions and reach consensus through the principles of *qiyaas* and *ijmaa*.⁶⁷ As the *ulama* congregated in the various schools of law in major cities across the Middle East, the legal body of work they produced consequently reflected the region's diversity of thought.⁶⁸

Since the onset of globalization, Islamic states have continued to more or less reevaluate their legal systems with a sense of realism and pragmatism. Through Islamic principles of analogical reasoning and consensus-building, Islamic jurists later established the essential foundation for the development of the Islamic state as they promulgated laws, dispensed justice, collected taxes, engaged in diplomacy, and assisted in the development of an empire.⁶⁹ Modern issues of globalization have led to the pragmatic and gradual development of modern commercial laws in most areas of the Islamic world. The synthesis of traditional Shari'a principles and modern commercial and contractual laws has developed as an influx of foreign trade and technology invade the region. Most recently, Middle Eastern legal systems have been largely supplemented and reconfigured to address complex issues of globalization and trade.⁷⁰ The legal system has

62. *Madhab* means school of law in Arabic. RIPPIN, *supra* note 27, at 134.

63. *Id.* at 76.

64. *Ulama* is defined as the learned class, specifically those learned in religious matters and law. *Id.* at 135.

65. *Qiyaas* is defined as analogical reasoning and is one of the sources of Islamic law. *Id.* at 134.

66. *Ijma*, or consensus of believers, is one of the sources of law attributed to the prophet Muhammad who believed in consensus in the community. LEWIS, *supra* note 12, at 226 (quoting the prophet Muhammad as saying, "[m]y community will not agree upon an error").

67. *See id.* at 76.

68. *Id.* at 76-77.

69. LEWIS, *supra* note 12, at 53.

70. *See* J.N.D. Anderson, *Modern Trends in Islam: Legal Reform and Modernisation in the Middle East*, in ISLAMIC LAW AND LEGAL THEORY, *supra* note 30, at 548-51. As Islamic law was supplemented by a variety of foreign elements, a protectionist attitude toward traditional laws and nationalism developed to varying degrees across the Middle East. This sense of "protectionism" in certain Middle Eastern nations has taken the form of resistance by conservative Islamic clerics to legal reforms in certain countries. *See* Stovall, *supra* note 33, at 840-41. Recently, however, the avoidance of globalization through "protectionism" has had a debilitating effect on certain nations' ability to participate in the global marketplace. *See id.* at 842-43. As a result, even the most conservative regimes have been prompted to implement laws necessary to sustain their economies. *See id.* at 842-43, 845. Today, contemporary lawmakers in almost every Middle Eastern country tend to make allowances for Islamic laws when possible, but carefully assure that commercial laws are not affected. *Id.* at 841-42. Luckily the transition has been rather smooth largely due to the fact that Islamic law does not provide a spectrum of answers to issues regarding commerce and trade, as opposed to personal or family matters, and also because the predominately Islamic leaders recognize that such legal reforms are necessitated by global economics. *Id.* at 847.

developed in a nonuniform manner based on the level of progress in each state, mostly "under a general umbrella of Islam."⁷¹

Often, the blending of Middle Eastern and European norms resulted in new structures that on the surface appeared Westernized, but remained inherently based on Islamic principles. Such variations are exemplified in the interpretations of constitutionalism and legislation in Islamic versus Western legal systems. Unlike the Western principle of constitutionalism, which is largely based on limiting the power of ruling parties and maintaining individual rights, Arab constitutions serve as a means of expressing national sovereignty, proclaiming ideology, and identifying and legitimizing lines of authority.⁷² Legislation also takes on a different form in the Islamic states.⁷³

The concept of legislation is considered a conglomeration of divine laws and principles revealed by God and eternally recorded in the Holy Quran.⁷⁴ Thus, governments only have administrative and organizational authority in matters that the Quran does not address.⁷⁵ As globalization and increased foreign trade seeped into the Islamic states, leaders largely supplemented their legal frameworks with newly promulgated laws that often emulated Western civil law codes.⁷⁶ Consequently, secular courts were created to address disputes arising from this newly created area of the law. Today, most commercial laws are handed down from legislative bodies and the disputes are dealt with in secular courts.⁷⁷ Currently, most Islamic states feature a dichotomy between the "secular" courts, which have jurisdiction over commercial and civil disputes (particularly those involving foreigners), and "Shari'a" courts, which have jurisdiction over family law and civil disputes strictly affecting national citizens.⁷⁸

Collectively, most nations in the region have responded positively to a changed world and marketplace. For the most part, Middle Eastern coun-

71. RIPPIN, *supra* note 27, at 76.

72. NATHAN J. BROWN, CONSTITUTIONS IN A NON-CONSTITUTIONAL WORLD: ARAB BASIC LAWS AND THE PROSPECTS FOR ACCOUNTABLE GOVERNMENT 35-36, 91-94 (2002). Egypt, Iraq, and Jordan all issued constitutions while under some form of British rule. *Id.* at 35. When Arab states such as Kuwait, Bahrain, Qatar, and UAE obtained independence in the 1960s and 1970s, they issued constitutions. *Id.* Finally, Oman and Saudi Arabia issued "basic" laws in the 1990s. *Id.* The Iranian Constitution of 1906 was approved by the monarchy and created by the parliament, which wanted to secure some control over state finances, treaties, and concessions through the document. *Id.* at 29-30.

73. LEWIS, *supra* note 12, at 224-25. The Shari'a does not permit human legislative power in the Islamic state; however, rulers were permitted to promulgate rules known as *kanun*, which regulate the affairs of the government, but these *kanun* would not supersede the Shari'a but amplify and update its provisions. *Id.*

74. *Id.*

75. *See id.* In deference to Shari'a, even today Saudi Arabian legislation is designated *nizam*, or ordinance, and not *qanun*, or law. SFEIR, *supra* note 54, at 27.

76. *See, e.g.,* GIL FEILER, THE MIDDLE EAST IN THE NEW MILLENNIUM: ECONOMIC DEVELOPMENT & BUSINESS LAW 22, 55 (2000) (discussing the role of foreign law in Egypt, whose law is influenced by the Napoleonic Code, Roman law, and Islamic Shari'a; and Bahrain, whose Contract Law and Civil Wrongs Ordinances are derived from English common law principles initially adopted during the British protectorate period).

77. *See generally* Anderson, *supra* note 70, at 549.

78. *Id.*

tries have dealt with new issues outside or opposed to Islamic legal principles rather pragmatically. An example of such pragmatism is evident in the manner in which Islamic legal systems have tackled the issues of *riba*, or usury (types of unearned advantage such as interest earned on loans), and *gharar*, or unearned advantage in the form of certain insurance contracts.⁷⁹ Islamic states have cleverly dealt with the issue of *riba* or usury by qualifying the nature of permissible forms of interest earned in commercial versus civil contracts and designating a periodic fee rather than an accumulating interest on certain loans.⁸⁰ Leaders have also artfully characterized insurance contracts as a form of bequest to the insured rather than a profit-making entity of the insurer in order to evade the issue of *gharar* altogether.⁸¹ Ironically, in certain cases, such limitations imposed on the legal system by the Shari'a have in fact been advantageous. In Saudi Arabia several banks have a structural advantage over foreign banks due to the interest-free funding that banking provides.⁸² Furthermore, the business preference for making "cash on the barrelhead"⁸³ payments to buyers in order to avoid issues of *riba*, or unearned interest, attracts foreign businesses.

Today, the majority of Middle Eastern countries maintain two separate bodies of law.⁸⁴ The statutes derived from the Shari'a still govern issues of

79. Stovall, *supra* note 33, at 840-41. However, countries have danced around these prohibitions as did the Supreme Council of the Senior Ulama (a government body of religious scholars) when they issued a decision in 1977 that cooperative/mutual insurance is a type of donation contract, and since cooperative insurance transactions do not create "profits," they deemed the insurance to be unobjectionable under Islamic law. *Id.* at 841. Also, despite the prohibition against *riba*, most Islamic legal systems draw a distinction that permits interest charges in commercial but not civil transactions, at least under predetermined ceilings. *Id.* Finally, despite the prohibition against *gharar*, which the Abu Dhabi courts have cited in nullifying derivatives contracts and options trading, the government has established Free Trade Zones where the prohibition is not upheld, thus allowing financial futures and options trading to legally take place outside the Emirates. *Id.* at 841-42.

80. *Id.*

81. See Umar F. Moghul, Esq. & Arshad A. Ahmed, Esq., *Contractual Forms in Islamic Finance Law and Islamic Inv. Co. of the Gulf (Bahamas) Ltd. v. Symphony Gems N.V. & Ors.: A First Impression Of Islamic Finance*, 27 *FORDHAM INT'L L.J.* 150, 170-71 (2003).

82. Saudi Arabia: Banking Sector Update, August 2003, ARAB FINANCE, at <https://www.arabfinance.com/research/ResearchView.asp?researchID=596> (Aug. 14, 2003) [hereinafter *Saudi Arabia: Banking Sector Update*].

83. "Cash on the Barrelhead" is a British idiom that generally means cash is paid immediately for products at the time of purchase. It is similar in meaning to the American idiom of "cold hard cash." See WAYNE MAGNUSON, *ENGLISH IDIOMS* (Prairie House, 2003).

84. See H.S. Shaaban, *Commercial Transactions in the Middle East: What Law Governs?*, 31 *LAW & POL'Y INT'L BUS.* 157, 160 (1999) ("Most, if not all, of the countries in the Middle East follow continental Europe in distinguishing between civil law matters and those that fall under the ambit of commercial law . . . [which provides] a framework capable of comprehending Sharia precepts alongside western commercial practices otherwise invalid under Islamic law."). In some countries Islamic law dominates the country's legal system, as is the case in Saudi Arabia and Iran, where non-Islamic rules supplement the main body of the law through regulations that govern modern commer-

family law and inheritance that affect nationals.⁸⁵ In most Middle Eastern nations, the development of trade and commerce has produced a modern body of commercial laws regarding foreign investment, labor, commercial transactions, corporate taxation, business organization, and intellectual property.⁸⁶ These commercial disputes are typically addressed in civil law or secular courts that co-exist with Shari'a courts. Often, there is a divergence between the application of Islamic laws to nationals and the application of a different set of rules and regulations to foreigners.⁸⁷ Conversely, administrative and commercial codes and remnants of previously adopted European codes govern disputes amongst nonnationals, contractual, commercial, and nonfamilial issues.⁸⁸ Furthermore, to attract foreign investors and the flow of capital to their markets, a movement toward a legal system that can support a transparent and reliable marketplace has gained momentum in the region.⁸⁹

Often, when new issues arise in these civil or secular courts, they are resolved by legal principles adopted from international treaties, organizations, or neighboring Middle Eastern nations.⁹⁰ Additionally, access to the global marketplace through organizations like the World Trade Organization (WTO) and the GCC have prompted swift and pragmatic legal solutions, reforms, and foreign policy formation amenable to increased trade and foreign investment.⁹¹ Countries in the region have thus entered the

cial transactions and disputes. See, e.g., Stovall, *supra* note 33, at 839-40 (discussing Saudi Arabia).

85. See Hossein Esmaeili & Jeremy Gans, *Islamic Law Across Cultural Borders: The Involvement of Western Nationals in Saudi Murder Trials*, 28 DENV. J. INT'L L. & POL'Y 145, 147 (2000) ("The traditional subjects of law, such as family law, inheritance, trusts, contract and criminal law are exclusively defined by the Sharia (traditional Islamic law). All other matters, including modern legal subjects such as corporations and broadcasting law, are regulated by royal decrees."). See also FEILER, *supra* note 76, at 23, 55-56, 420 (discussing the maintenance in Bahrain, Egypt, and the UAE of Shari'a courts that address issues affecting nationals and parallel civil courts that hear cases concerning commercial disputes and issues concerning non-Muslims or nonnationals).

86. *Saudi Arabia: Banking Sector Update*, *supra* note 82.

87. WALTER H. DIAMOND & DOROTHY B. DIAMOND, *FOREIGN TAX & TRADE BRIEFS, PART 5: MIDDLE EAST, SAUDI ARABIA* § 2 (2003). For example, religious taxes in the form of *zakat* of 2.25% are only levied on the income and property of nationals and national participants in nonnational corporations and national interests in local companies within most Islamic states. *Id.*

88. For example, a large part of Bahrain's statutory laws are derived from the Shari'a, while the Contract Law and Civil Wrong Ordinance are based on principles of English Common law originally adopted during the British Protectorate Period. FEILER, *supra* note 76, at 22-23. Egypt has adopted a civil law system in which matters involving family law and inheritance are subject to Islamic substantive law and cases involving the issues of non-Muslim foreigners are dealt with according to the substantive law of the nation of the parties involved. *Id.* at 56.

89. See Stovall, *supra* note 33, at 844-46 (asserting that Arab countries might achieve greater transparency through reduction of discretionary authority held by government officials when awarding contracts, issuing licenses, and in their dealings with foreign investors).

90. See, e.g., FEILER, *supra* note 76, at 12, 35, 67, 103-04, 109, 137-39 (detailing developments of patent and copyright law in the Middle East).

91. Stovall, *supra* note 33, at 842-43 (discussing the current role globalization plays in compelling legal and economic reforms in Arab states).

twenty-first century with a fresh focus on their cultural similarities and economic homogeneity, particularly their predominant reliance on the oil industry, in an effort to foster a higher level of regional integration and economic development.

II. The Middle East in the Twenty-First Century: A Burgeoning Climate for Investment and Trade Opportunities

A. The Gulf Cooperation Council: The Archetype for Integration, Cooperation, and Effective Harmonization of Investment and Trade Policies

Being fully aware of their mutual bonds of special relations, common characteristics and similar systems founded on the Creed of Islam; and Based on their faith in the common destiny that links their peoples. . . the [Gulf] Cooperation Council [was formed to] effect coordination, integration and interconnection between member states in all fields. . . [including c]ommerce, customs and communications [and l]egislation and administrative affairs.⁹²

Economic integration through free trade agreements, customs unions, and harmonization of domestic policies has typically laid the foundation for the regional economic development of nations with common interests. Historically, economists have agreed that freer trade in goods and services results in faster economic growth.⁹³ As the European Union (EU) and the North American Free Trade Agreement (NAFTA) have achieved considerable economic growth and integration through regional cooperation in the West, the GCC has looked to emulate such success and is in the process of achieving similar economic harmonization in the Middle East.

The GCC is a regional organization created in 1981 by the Middle Eastern countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates. Recognizing a collective and potentially detrimental reliance on an oil-based economy, the absence of major stakes in the global marketplace, and a rapidly growing domestic labor force, the group turned their common concerns into a collective goal of economic reforms and integration.⁹⁴

Twenty years after its inception, the GCC has made drastic efforts to achieve the latter objective. Since the early 1980s, the regional entity has produced a combined GDP of about \$335 billion, and has produced 45%

92. Cooperation Council Charter, art. 1, reprinted in JOHN A. SANDWICK, *THE GULF COOPERATION COUNCIL: MODERNIZATION AND STABILITY IN AN INTERDEPENDENT WORLD* 217 (1987).

93. See generally Sebastian Edwards, *Capital Mobility, Capital Controls and Globalization in the Twenty First Century*, 579 ANNALS 261 (2002) (analyzing the effects of economic openness and increasing capital mobility on economic growth, and arguing that "anti-globalization" views are based on incomplete evidence that tends to ignore important historical evidence).

94. Fasano & Iqbal, *supra* note 3, at paras. 1-2.

of the world's oil reserves and 17% of the world's natural gas reserves.⁹⁵ The GCC is the largest market in the Near East and North Africa for the United States and the fifth largest worldwide American trading partner.⁹⁶ U.S. sales of goods and services to the GCC have totaled more than \$20 billion annually, sustaining more than half a million jobs in the United States.⁹⁷

To continue their role as a strong trading partner and attract foreign business as a major investment hub, each nation-state intends to follow a thorough course of policy convergence over the next ten years including a monetary union with a single currency pegged to the U.S. dollar.⁹⁸ The International Monetary Fund (IMF) predicts that the planned monetary union will promote policy coordination, reduce transaction costs, improve price transparency, and increase trade.⁹⁹ Such measures are also expected to indirectly enhance the economies of the GCC countries by improving the efficiency of their collective financial services.¹⁰⁰ The IMF recently reported that the pegged exchange rate system in the GCC countries has contributed to the maintenance of low inflation rates and the strengthening confidence in the marketplace.¹⁰¹ The IMF contends that to ensure success, the GCC members must assist the monetary union by introducing a range of national structural reforms.¹⁰²

Currently, the GCC countries are individually implementing structural reforms that include privatization of typically state-owned industries, lifting barriers to foreign direct investment, and diversifying their oil-based economies.¹⁰³ Not only do the GCC countries share similar economic concerns and demand similar reforms, their common culture, language, and underlying histories make these collective decisions easier. As a result, they have consistently and concurrently implemented measures that remove barriers that obstruct the free movement of goods, labor, and capital across the Middle East. Nevertheless, the members are still far from a full convergence of economic policies and sustained economic growth.¹⁰⁴

95. *Id.* at para. 2. In 2001, GCC countries decided to establish a monetary union with a single currency pegged to the U.S. dollar. *Id.* at para. 1. However, fundamental choices and challenges lie ahead for the GCC, including rules governing the mobility of capital and labor, plans for a single common external tariff, reducing the region's vulnerability to oil price fluctuation, and employment for the rapidly growing domestic labor force. *Id.* at para. 3.

96. ABCGC, *The Gulf: Competition for a Key Market*, *supra* note 8.

97. ABCGC, *The ABCGC: Promoting America's Business Interests in the GCC*, at <http://www.abcgcc.org/about/htm> (last visited Feb. 27, 2005).

98. Fasano & Iqbal, *supra* note 3, at para. 2 (discussing the implementation of the GCC monetary union and the pegging of their currencies to the U.S. dollar).

99. *Id.* at para. 4.

100. *Id.*

101. *Id.* at para. 5.

102. *Id.* at para. 3.

103. *Id.*

104. *See id.* Despite this progress toward integration, six countries continued to differ in economic performance and policy preferences during the 1990s. Although inflation has been traditionally low, it differs across countries, leading to diverging paths for real

To ensure sustained growth and harmonization, the GCC agenda is full of upcoming restructuring and reform, which include pegging the common currency to the U.S. dollar, harmonization of fiscal and economic information, increased trade agreements with the United States, harmonization of all commercial laws, and the creation of a common central bank similar to that of the European Union.¹⁰⁵ Individual member states have introduced fundamental structural modifications and regulations in an effort to promote the implementation of the latter reforms.¹⁰⁶ These emerging markets must continue to promote reform within the framework of modern financial institutions so they may better compete in the global financial market.¹⁰⁷ The following GCC members have individually moved toward expansive reforms through economic diversification, integration, and privatization in an effort to collectively compete aggressively in the global marketplace.

1. Bahrain

To preclude a financial economic collapse in Bahrain in case oil wells run dry, Bahraini leaders have successfully fashioned themselves as an offshore banking and investment hub in the region, approved several diversification projects, and created a financial tax haven for international investors.¹⁰⁸ Since 1975, when Bahrain began inviting large foreign banks to apply for licenses enabling them to operate as offshore banking entities, the country has successfully licensed over fifty offshore banking units.¹⁰⁹ The elite group includes banks from Hong Kong, Switzerland, the United Kingdom, Canada, France, and the United States. The Bahrain Monetary Agency (BMA) regulates the activities of these banks, which have built up lucrative loan portfolios to Europe and the Far East, while others have shifted their business from lending to investment banking.¹¹⁰ Bahrain is also home to 21 investment banks,¹¹¹ 59 representative offices of overseas

effective exchange rates. *Id.* at para. 6. Real GDP growth disparities and fiscal deficits due to volatile global oil prices also exist. *Id.*

105. *Id.* The approach used by the EU to organize central bank responsibilities could be a useful example for the GCC. Under such an arrangement the common central bank would be responsible for making monetary policy decisions, overseeing payment systems, and coordinating efforts toward financial integration. Similarly, the national GCC central banks or monetary authorities would implement these decisions, conduct all or some of the foreign exchange operations, maintain their banking supervisory functions, issue the common currency, and operate national payment systems.

106. See, e.g., Nadim Kawach, *UAE Expects Gulf Monetary Union on Time*, GULF NEWS, Apr. 13, 2004 (discussing the GCC's plan to create the Middle East's first monetary union).

107. See Edwards, *supra* note 93, at 263 (asserting that where emerging markets have lacked modern financial institutions, they become more vulnerable to the volatility of global financial markets, and pointing to a positive correlation between economic openness and economic performance).

108. See WALTER H. DIAMOND & DOROTHY B. DIAMOND, 1 TAX HAVENS OF THE WORLD: BAHRAIN, BANKING AND FOREIGN EXCHANGE (2003) (discussing major offshore banks) [hereinafter DIAMOND & DIAMOND, BAHRAIN, BANKING AND FOREIGN EXCHANGE]

109. *Id.*

110. *Id.*

111. *Id.* at Tax Exemptions and Reductions.

banks, 20 full-license commercial banks, and 28 exchange and money brokerage firms.¹¹² The Gulf International Bank boasts \$2 billion in assets and is the largest offshore banking entity in Bahrain.¹¹³ Citibank of Bahrain regards its Bahrain banking activities as more profitable than its offices in Hong Kong and Singapore, and has opened an Islamic subsidiary, the Citi Islamic Investment Bank, that is capitalized at \$20 million and employs Islamic banking principles.¹¹⁴ A major advantage of the Bahraini banking sector is its location in a time zone that links the Eastern and Western money markets.¹¹⁵ The government has maintained this prominent status by close regulation of the financial sector through the Bahrain Monetary Agency (BMA), which requires that each financial institution have a BMA license to operate in the country.¹¹⁶

To attract foreign investment by manufacturers and other business entrepreneurs, Bahrain created the Overseas Promotion and Marketing Committee¹¹⁷ and the Bahrain Development Bank (BDB) in 1992.¹¹⁸ This group provides government funded loans in annual increments of 4,000,000 Bahraini Dinars (BD) (over \$10.5 million) to the private sector.¹¹⁹ The BDB welcomes both joint ventures and foreign-owned enterprises. In addition, the BDB charges low annual interest rates for both small and large businesses.¹²⁰ The BDB may also freely lend without demanding collateral of cash, real estate, or publicly quoted shares.¹²¹ The Bahraini government has also made great strides toward privatization and diversification of its industrial base. Although a large segment of the economy's growing industrial sector remains largely under government control, most major industries are open to foreign investment and the number of private companies should continue to increase.¹²²

To further remove barriers to the entrance of foreign capital into Bahrain, this GCC country revised its "Commercial Companies law" and promulgated a new Civil Code.¹²³ The Commercial Companies law per-

112. *Id.* at Banking and Foreign Exchange.

113. *Id.*

114. *Id.*

115. *Id.* Bahrain banks open as Singapore banks close since Friday is the Muslim holy day, and Bahraini banks reopen on Saturdays and Sundays. *Id.* Bahrain effectively links the business week between Singapore and European markets. *Id.*

116. DOING BUSINESS IN BAHRAIN 26 (Price Waterhouse World Firm Service 1997).

117. DIAMOND & DIAMOND, BAHRAIN, BANKING AND FOREIGN EXCHANGE, *supra* note 108, at Tax Exemptions and Reductions. The Overseas Promotion and Marketing Committee promotes foreign investment abroad. *Id.* It is chaired by the Minister for Commerce and Agriculture and is composed of both government and business members. *Id.* A branch of the Committee is easily accessible in the Bahrain International Exhibition Centre near downtown Manama, the capital. *Id.*

118. *Id.* at Banking and Foreign Exchange.

119. *Id.*

120. *See id.* (reporting that the BDB's annual interest rate is 4% for small businesses and 5% for large businesses).

121. *Id.*

122. *See id.*

123. Promulgating the Commercial Companies Law: Bahraini Legislative Decree No. 21, 2001; Promulgating the Civil Code: Bahraini Legislative Decree No. 19, (2001). For a description of the effects of these new laws, see Jim Phipps et. al., 36 MIDDLE EASTERN

mits 100% foreign-owned companies if the company's purpose is to establish a domestic industrial enterprise, if the company plans to invest most of its capital in an industrial development project, or if the company's objective is to use this establishment as a primary center for the investment of funds related to the distribution of goods or services.¹²⁴ Companies have reacted positively to the Commercial Companies law because of the appeal of Bahrain's offshore sector and the exemptions offered to foreign companies.¹²⁵ Since 1977, when the Commercial Companies law was revised to permit formation of 100% foreign-owned closed joint stock companies, the laws have been extended to permit 100% foreign ownership of limited liability companies.¹²⁶ In 1997 the Ministry of Commerce confirmed that qualifying companies may be 100% foreign-owned so long as they invest in a category of specified activities in Bahrain¹²⁷ linked to the distribution of certain goods or services.

Another attractive aspect of the Bahraini economy is the absence of personal or corporate taxation outside the oil exploration sector.¹²⁸ Also, profits, capital, and dividends may be repatriated without any financial restrictions.¹²⁹ Raw materials and semi-manufactured goods, development-related products, and transshipments and re-exports are all exempt from taxation and customs duties.¹³⁰

Bahrain is also home to the Mina Sulman Free Trade Zone, a major port located near the capital.¹³¹ The government does not levy customs duties on imported foreign goods if they will later be exported, and permits wholly foreign-owned companies to manufacture within the zone.¹³²

The only burden on foreign investors appears to be limited to a duty to register companies with the Ministry of Commerce¹³³ and a requirement that banks obtain a BMA license prior to engaging in operation.¹³⁴ The laws permit 100% foreign ownership of offshore companies, branches, and

COMM. LAW 901 (2002), available at http://www.wrf.com/db30/cgi-bin/pubs/Middle_Eastern_Commercial_Law.pdf.

124. See FEILER, *supra* note 76, at 28.

125. *Id.*

126. DIAMOND & DIAMOND, *BAHRAIN, BANKING AND FOREIGN EXCHANGE*, *supra* note 108, at Bahrain Investment & Capital Incentives.

127. *Id.* These activities include: assembly, packaging and shipping of the company's products, using bonded storage for products for redistribution, providing highly specialized technical services, certain management activities, consultancy and training services, telecommunications, courier and funds transfer services, publication services, and industrial support services. *Id.*

128. *DOING BUSINESS IN BAHRAIN*, *supra* note 116, at 25.

129. *Id.*

130. *Id.*

131. DIAMOND & DIAMOND, *BAHRAIN, BANKING AND FOREIGN EXCHANGE*, *supra* note 108, at Bahrain Free Trade Zone.

132. *Id.*

133. *DOING BUSINESS IN BAHRAIN*, *supra* note 116, at 44 (noting that "[f]ast-track registration is possible within seven days of submitting an application if all accompanying documents are in order"). *Id.*

134. *Id.* at 27.

offices.¹³⁵ However, the law limits foreign ownership of partnerships, joint ventures, and corporations to 49%.¹³⁶ Only Bahraini and GCC nationals are permitted to own real property in the country.¹³⁷

Such reforms have prompted the U.S. government to take heed of the commercial opportunities in Bahrain through the initiation of talks toward a free trade agreement.¹³⁸ The United States seeks to eliminate tariffs and other duties on trade with Bahrain by the end of 2004.¹³⁹ Since beginning free trade talks with the United States in 2002, Bahrain has joined the WTO Information Technology Agreement, committed to zero tariffs in the computer and telecommunications industries, and has begun to implement the World Intellectual Property Organization Internet treaties.¹⁴⁰

Bahrain has also taken great measures to promote foreign participation in its economy through political stabilization and transparency. In February 2000, Bahraini voters overwhelmingly approved a referendum to adopt a new National Charter, which established a series of constitutional reforms. These constitutional reforms included the following: the resurgence of a bicameral parliament, which had not functioned for twenty-seven years; total separation of the executive, legislative, and judicial powers; equality in opportunities among different races, religions, and sexes; and the pardoning of political prisoners.¹⁴¹

2. *Saudi Arabia*

Saudi Arabia is home to the world's largest oil reserves,¹⁴² the largest stock market in the region,¹⁴³ and many young professionals.¹⁴⁴ The appeal of the Saudi Arabian economy arises from its relatively stable government and currency and low levels of inflation.¹⁴⁵ Though the Saudi commercial banking system is less complex than other major industrialized countries, it has recently expanded significantly.¹⁴⁶ Certain segments of

135. *Id.* at 44.

136. *Id.*

137. *Id.* at 29.

138. Press Release, United States Trade Representative, Zoellick Joins Launching of US-Bahrain FTA Congressional Caucus (Mar. 3, 2004), available at <http://www.ustr.gov>.

139. *Id.*

140. *Id.*

141. DIAMOND & DIAMOND, *BAHRAIN, BANKING AND FOREIGN EXCHANGE*, *supra* note 108, at Bahrain Tax Exemptions & Reductions.

142. SAUDI ARABIAN GENERAL INVESTMENT AUTHORITY, *ECONOMY & RESOURCES* available at <http://www.sagia.gov.sa> (stating that Saudi Arabia possesses 25% of the world's proven oil reserves).

143. *Id.* (stating that foreigners are permitted to invest in the stock market through investment funds).

144. *Id.* (reporting the average annual population growth rate at 3.5%).

145. *Id.*

146. *DOING BUSINESS IN SAUDI ARABIA* 44-45 (Price Waterhouse World Firm Service 1991). Saudi Arabia's financial regulatory sector consists of the Central Bank (Saudi Arabian Monetary Agency (SAMA)), commercial banks, specialized credit institutions, and the stock market. The government stake in commercial banks is less than 10%, and the laws permit foreigners to invest in the stock market through investment funds. SAUDI ARABIAN GENERAL INVESTMENT AUTHORITY, *supra* note 142.

the Saudi population enjoy a relatively high living standard, and most Saudis own their homes.¹⁴⁷

Saudi Arabia is also home to the largest GCC economy. The country is in the process of expanding its economy beyond the oil sector and liberalizing its trade policies in an effort to join the WTO. The government has privatized certain sectors, such as the telecommunications, electricity, and airline industries, postal services, railways, port services, and water utilities to potential private investors.¹⁴⁸ Privatization has been facilitated by the creation of the Supreme Economic Council (SEC).¹⁴⁹ The SEC supervises the formulation of policy and the budget, and coordinates the implementation of policies between government agencies.¹⁵⁰ The Saudi Arabian General Investment Authority assists foreign investors by preparing feasibility studies for industrial projects.¹⁵¹

The newly promulgated Capital Markets Law and recently enacted insurance laws intend to lure a wide array of foreign investors to the Saudi markets in 2004. The Capital Market law, passed in June 2003, was a fundamental reform swept in with the momentum of a booming Saudi Arabian economy.¹⁵² The law seeks to create opportunities in the banking sector by diversifying their operations beyond basic retail banking.¹⁵³ GCC countries were the first to respond to the opportunities presented by the Capital Market Law. Shortly after the government implemented the law, it swiftly approved new banking licenses for Bahrain's Gulf International Bank, Dubai's Emirates Bank International, and the National Banks of Kuwait and Bahrain.¹⁵⁴ European banks have also sought a stake in the Saudi banking sector, and the government approved a branch license for Deutsche Bank in October 2003.¹⁵⁵ The expansion of the Saudi market is expected to continue through government privatization programs such as the newly created Saudi Telecom Company, the release of government stock holdings in large investment funds, and the imminent sale of the largest government owned bank.¹⁵⁶

Furthermore, there are no restrictions on foreign exchange and the government permits 100% repatriation of profits.¹⁵⁷ Saudi Arabia is also

147. DOING BUSINESS IN SAUDI ARABIA, *supra* note 146, at 4.

148. SAUDI ARABIAN GENERAL INVESTMENT AUTHORITY, *supra* note 142.

149. *Id.*

150. *Id.*

151. *Id.*

152. Stephen Timewell, *Saudi Arabia—Springboard for Growth*, THE BANKER (LONDON) Mar. 1, 2004, at 4 (noting that the Saudi economy grew 6.4% the previous year).

153. *Id.* at 5 (quoting Dr. Nahed Taher, Senior Economist at the National Commercial Bank, regarding opportunities in the Saudi banking sector, as saying that "[s]ome of the emerging opportunities are full-scale brokerage services, private placements, initial public offerings (IPO's), dealing in the corporate bonds market, conversion of existing family businesses to joint stock companies, and facilitating mergers and acquisitions of private companies").

154. *Id.*

155. *Id.* The German bank will focus entirely on investment banking activities and the bank is expected to open by the last quarter of 2004. *Id.*

156. *Id.* at 6.

157. SAUDI ARABIAN GENERAL INVESTMENT AUTHORITY, *supra* note 142.

one of the only countries in the world that permits companies to lose money indefinitely, or until they become profitable.¹⁵⁸ Additional government investment laws have fixed annual land rent in industrial areas at \$0.02 cents per square meter, cut port fees by 50%, and exempted industrial machinery from import duties.¹⁵⁹ To facilitate a greater volume of trade, the Saudi Ports Authority equipped its seaports with highly advanced technology and loading equipment.¹⁶⁰

Typically, foreign investors in Saudi Arabia are entitled to the same investment incentives as Saudi nationals.¹⁶¹ Additionally, foreign investments in agricultural or industrial projects enjoy additional incentives such as a ten-year tax holiday. Investments in the services sector are exempt for five years.¹⁶² Foreign entities and partial foreign owners of mixed companies and partnerships are subject to income and corporate taxes.¹⁶³ Investors are exempt from customs duties in certain industries, such as machinery, tools, equipment, spare parts, raw materials, and packaging materials.¹⁶⁴

Saudi Arabia has also taken steps to facilitate and encourage foreign investment in its developing industries.¹⁶⁵ Prior to investing, foreigners must attain approval of their business from the Ministry of Industry and Electricity and register with the Ministry of Commerce.¹⁶⁶ All foreign companies and individuals investing capital in Saudi Arabia must obtain a Foreign Capital Investment Committee (FCIC) license.¹⁶⁷ Although a foreign entity is not required to have a Saudi partner, an FCIC license is far easier to obtain where Saudis own at least 25–50% of the company.¹⁶⁸ Additionally, laws require that importers be Saudi nationals or Saudi companies.¹⁶⁹

158. *Id.*

159. *Id.*

160. *DOING BUSINESS IN SAUDI ARABIA*, *supra* note 146, at 50.

161. *Id.* at 26.

162. *Id.* at 24. To qualify for such tax holidays, Saudi participation in the business entity must be no less than 25%, although there is a strong preference for firms with at least 25% Saudi ownership. *Id.* at 25. Such firms are eligible for tax holidays and interest-free loans from Government credit institutions. *Id.*

163. *See id.* at 95. Corporate tax rates range from 25 to 45%. Alternatively, foreign entities can elect to pay tax on a “deemed profit basis” by subjecting their total income to the minimum deemed profit of 15%. *Id.* at 98.

164. *Id.* at 30. Other customs duties are relatively low. *Id.* at 31.

165. *See id.* at 23–25 (discussing Saudi attitudes toward foreign investors).

166. *Id.* at 39. The Ministry of Commerce grants commercial registration for all foreign and domestic companies, and supervises all companies and professionals doing business in the country. Banking in the country is regulated by the Saudi Arabian Monetary Agency (SAMA). *Id.*

167. *Id.* at 36. This license permits establishment of the business and grants the respective tax holiday. Once an investment license is issued, founders need to obtain approval of the company through the Ministry of Commerce. There is no specific time frame for the issuance of a license but the Ministry usually approves a complete application within six months. *Id.* at 36, 71.

168. *Id.* at 37. The percentage of preferred Saudi ownership varies from industry to industry. For example, in the oil industry and in banking, foreign participation cannot exceed 40%. In other industries, a minimum of 25% Saudi participation is required for a company to qualify for certain investment incentives. *Id.*

169. *Id.* at 50.

Purely foreign businesses engaged in government contracts must appoint an agent who is a Saudi national or resident and registered as a commercial agent in the country.¹⁷⁰ Foreign individuals earning income from a Saudi source other than from employment and self-employment in the country are taxed on a sliding scale depending on their level of income.¹⁷¹ Additionally, the tax law exempts companies that simply establish a regional office within Saudi Arabia to carry out technical services and local marketing of foreign products.¹⁷²

In an effort to boost agricultural development and investment in this largely desert nation, the government has instituted a series of incentives for investors in this sector. The government will provide loans of up to 80% of fixed assets for agricultural projects under 3 million Saudi Riyals, and 40% for projects over 3 million Saudi Riyals. In some areas, the government will also fund 90% of the cost of new agricultural projects.¹⁷³ Generally, foreign investors may seek financing from Saudi banks, provided that another bank completely guarantees the foreign borrower's collateral.¹⁷⁴

However, many restrictions on commerce still exist in Saudi Arabia. Companies may not import products containing alcohol and pork, and need special approval to import certain products such as livestock, books, periodicals, movies, and pharmaceutical products.¹⁷⁵ Additionally, foreign individuals and companies are not allowed to own real property in Saudi Arabia, although locally registered companies can acquire or sell real property.¹⁷⁶ A new Real Estate law allows foreigners to own real estate for company activities and sponsor their foreign employees who wish to own real property.¹⁷⁷

3. Kuwait

In 1999 the United Nations Human Development Report ranked Kuwait above all Arab states and 35th in the world in the area of human

170. *Id.* at 51.

171. DIAMOND & DIAMOND, *FOREIGN TAX & TRADE BRIEFS*, *supra* note 87, § 1. The tax rate is 25% on net professional or partnership income up to 100,000 Saudi Riyals, but progresses to 45% for over 1,000,000 Saudi Riyals.

172. *Id.*

173. *DOING BUSINESS IN SAUDI ARABIA*, *supra* note 146, at 31.

174. *Id.* at 47.

175. *Id.* at 48-49. Prohibited imports also include: weapons, narcotics, pornographic materials, gambling games and materials (except playing cards and billiards), distillery equipment, and personified sculptures. Products requiring special approval prior to importation include: agricultural seeds, products and plants, food supplies, religious books and tapes, chemical materials, wireless equipment, horses, perfumes, natural asphalt, and archaeological pieces. *Id.* Also, imports from Israel and South Africa are legally forbidden. *Id.*

176. *Id.* at 102. Any gain generated must be included in income and subject to tax. *Id.*

177. SAUDI ARABIAN GENERAL INVESTMENT AUTHORITY, *supra* note 142. The new Real Estate law only precludes foreigners from owning real property in the two holy cities of Mecca and Medina. *Id.*

development.¹⁷⁸ The United Nations commended the government for attempting to relieve its economic dependence on oil, and for its high rate of health and education development.¹⁷⁹

The Kuwaiti government has implemented perhaps the most dramatic economic reforms in the Gulf following WTO accession in 1994. These reforms have come in the shape of new investment laws, including trademark, patent, and foreign direct investment laws. The recent passage of the "Direct Foreign Capital Investment Law" was aimed at liberalizing trade,¹⁸⁰ reducing the government's role in the economy, and promoting the private sector.¹⁸¹ This law also created several government offices equipped to promptly process licenses and permits, and to promote and study foreign and domestic investments. Most importantly, this law was created to grant advantages to foreign investments and eliminate bureaucratic red tape.¹⁸²

Under the Foreign Direct Investment Law (FDI), foreigners are permitted to own 100% of Kuwaiti companies¹⁸³ and corporate taxes have been reduced from 55% to 25%.¹⁸⁴ In addition, companies would receive a tax holiday of ten years, exemption from customs duty on imports of capital equipment and raw materials, and permission to bring in necessary foreign labor.¹⁸⁵ The Kuwaiti government also created a Foreign Investment Capital Office to more efficiently process FDI applications.¹⁸⁶ Prior initiatives had already abolished the requirement that foreign majority-owned firms employ a local agent.¹⁸⁷ Additionally, Kuwait recently amended a series of its copyright and patent laws. Copyright, patent, and trademark

178. KUWAIT INFORMATION OFFICE, INVESTMENT CLIMATE, available at http://www.kuwait-info.org/Business_in_Kuwait/investment_climate.html (last visited Mar. 23, 2005).

179. *Id.*

180. Phipps et al., *supra* note 123, at 916L *see also* DIAMOND & DIAMOND, FOREIGN TAX & TRADE BRIEFS, *supra* note 87, § 2 (Kuwait) (noting that import restrictions still exist; permits are required for all imported products except foodstuffs; foreigners may only own 49% of corporate entities in Kuwait; import licenses are restricted to Kuwaiti nationals and Kuwait corporate entities; export licenses are not required for most items, though exports of sheep, poultry, fats, and alcohol are prohibited altogether).

181. Phipps et al., *supra* note 123, at 916.

182. *See id.* at 918-19 (discussing the Kuwaiti commercial laws of 2001, including the new foreign direct investment law and the law on Trademarks, Patent and Industrial design). The Law on Direct Foreign Capital Investment provides for the establishment of a Foreign Capital Investment Committee (FCIC) and also creates a special office called the Foreign Investment Capital Office (FICO). *Id.* The tax advantages under the Investment law include a "tax holiday" for up to ten years, full or partial exemption from customs duties on certain imports, and allocation of real estate. *Id.*

183. Kuwait: 2002 Article IV Consultation—Staff Report, International Monetary Fund Country Report No. 03/13, Jan. 2003, at 12, available at <http://www.imf.org/external/pubs>. The report indicates that 100% foreign ownership is subject to conditions to be determined by the Kuwaiti Council of Ministers. *Id.* at 12 n.12.

184. *Id.*

185. Phipps et al., *supra* note 123, at 918-19.

186. *Id.* at 919.

187. *See id.* at 918 (noting that "the opening in 1998 of the Kuwait Free Trade Zone . . . allows foreign companies to do business there without having to associate with a local agent"). Another provision permits foreigners to trade on the Kuwait Stock Exchange. *Id.* at 918-20.

legislation enacted in 2000-2001 has brought Kuwait in compliance with international standards dictated by the WTO Agreement on Trade Related Aspects of Intellectual Property Rights.¹⁸⁸

On August 14, 1983 the Kuwait Stock Exchange (KSE) was established and has since become the most active exchange in the region.¹⁸⁹ To promote outside investment, the KSE permits foreigners to purchase mutual funds in the KSE and permits GCC nationals to purchase any stocks on the Exchange.¹⁹⁰ Additionally, in September 2000 a law on portfolio foreign investment was approved, which now allows foreigners to own and trade shares of joint stock companies listed on the KSE.¹⁹¹ The overall stock market index has since increased by 26.7% in 2001 and gained another 22% by September 2002.¹⁹²

Another incentive to doing business in Kuwait is the absence of taxes on national or foreign individuals residing in Kuwait.¹⁹³ Business partners and employees are taxed as individuals, and are therefore not subject to Kuwaiti taxes.¹⁹⁴ On the other hand, corporations engaged in partnership pay taxes at a graduated corporate rate.¹⁹⁵ Corporations engaged in industrial development in Kuwait may be exempted from corporate income taxes for ten years if they consist of mostly Kuwaiti capital.¹⁹⁶ Furthermore, there are no royalty or remittance taxes in Kuwait.¹⁹⁷

Kuwait's government has attempted to expand the private sector of its economy.¹⁹⁸ In an effort to privatize, the Kuwaiti government has divested its holdings in several private companies and banks through public auctions on the KSE and negotiated sales to strategic investors.¹⁹⁹ In September 1992, the Kuwait Investment Authority (KIA) began implementing a three-phase privatization program largely aimed at reducing the nation's economic dependence on oil profits.²⁰⁰ Since the program's first phase, the government has sold nearly \$2.9 billion worth of assets held in local

188. *Id.* at 920.

189. KUWAIT INFORMATION OFFICE, *supra* note 178.

190. *Id.*

191. Kuwait: 2002 Article IV Consultation-Staff Report, *supra* note 183, at 8. Under the September 2000 Portfolio Foreign Investment Law, no foreign individuals or groups may own more than 5% of the capital of a Kuwaiti Bank unless approved by the Central Bank of Kuwait (CBK). *Id.* Foreigners may not own more than 49% of any bank unless recommended and approved by the government.

192. *Id.* Consequently, by June 2002 market capitalization increased to 10 Billion Kuwaiti dinar. *Id.*

193. DIAMOND & DIAMOND, FOREIGN TAX & TRADE BRIEFS, *supra* note 87, § 1 (Kuwait).

194. *Id.*

195. *Id.*

196. *Id.* (Industrial Encouragement Law No. 655)

197. *Id.*

198. KUWAIT INFORMATION OFFICE, *supra* note 179.

199. United States Trade Information Center, *Economic Trends and Outlook: Kuwait*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf>. For example, in June 2001, the government divested itself of \$540.2 million in the Mobile Telecommunication Company.

200. KUWAIT INFORMATION OFFICE, *supra* note 178.

companies.²⁰¹ The second and third phases call for the privatization of certain leading state-owned companies, such as the Petrochemical Industries Company and Kuwait Airways Corporation.²⁰²

4. *Qatar*

Qatar, a founding member of the GCC, has also sought to diversify its oil and natural gas based economy by expanding other sectors such as the telecommunication and tourism industries.²⁰³ A member of the WTO, Qatar is one of the world's major energy exporters. It has recently diversified its industrial sector to complement its energy sector.²⁰⁴ A major flow of foreign investment over the past thirty years has made possible the development of Qatar's oil and natural gas industries. The country has facilitated this growth by investing in the construction of the largest shipping ports in the strategically located export hub in the center of the Persian Gulf. Since 1998, the country has enjoyed trade balance surpluses, and inflation rates have remained low due to cautious monetary and exchange rate policies.²⁰⁵

The Qatari government continues to actively recruit large-scale foreign investment for the development of infrastructure and petrochemical projects, as well as smaller-scale investment for the development of tourism and construction.²⁰⁶ The government has successfully recruited foreign investment because of the opportunities in the Qatari economy. These opportunities for growth stem from the privatization of traditionally state-owned industries, the availability of cheap energy, low labor costs, low cost of living, and its central location in the Persian Gulf.²⁰⁷

Privatization efforts have created lucrative business opportunities for foreign investors. Currently a massive independent power project is on the market and the government estimates that a 90% stake in the project will be offered to a foreign developer.²⁰⁸ Qatar will also continue to attract high-stake foreign investments due to low overhead that permits companies to market internationally at competitive prices and exemptions on custom duties on a variety of products.²⁰⁹

Currently, Qatar has no personal taxes and no value-added or sales taxes, although all foreign investors must pay corporate taxes on business profits earned within the country.²¹⁰ However, in cases where large-scale

201. *Id.*

202. *Id.*

203. Macroeconomic Overview of Qatar, ARAB FINANCE, Dec. 12, 2002, available at <https://www.arabfinance.com/AFSource>.

204. *Middle East Oasis Offers Excellent Investment Opportunities*, THE KOREA HERALD, Sept. 3, 2003.

205. Macroeconomic Overview of Qatar, *supra* note 203. Note that the high oil prices have contributed to Qatar's budget surplus. *Id.*

206. DOING BUSINESS IN QATAR 17-20 (Price Waterhouse World Firm Service 1997).

207. *Id.*

208. *Middle East Oasis Offers Excellent Investment Opportunities*, *supra* note 204.

209. See DOING BUSINESS IN QATAR, *supra* note 206, at 20, 35.

210. *Id.* at 72. Additionally, there are no customs duties on essential goods. Customs duties are charged at four percent ad valorem (proportional to the value of the product

investments are involved, tax holidays may be granted on an individual basis.²¹¹ Foreign investors may form business entities or joint ventures with Qataris.²¹² However, the government permits full foreign ownership of any industries deemed to be of national significance.²¹³

Some restrictions on business activity in Qatar include the prohibition on foreigners (except GCC nationals) from owning real property in Qatar.²¹⁴ Despite this restriction, foreigners are permitted to enter long-term leases for up to fifty years.²¹⁵ Also, foreign exporters must sell their goods through a Qatari agent. In addition, foreigners may not act in Qatar as commercial agents or importers.²¹⁶

5. United Arab Emirates

The United Arab Emirates have successfully used recent windfalls in oil prices to modernize and expand their infrastructure and diversify their economy. As a result, today the coastlines of the Emirates are lined with modern skyscrapers, factories, luxury hotels, airports, hospitals, and new schools. The nation enjoys less internal income disparity than other Middle Eastern countries, and its per capita income is similar to that of most Western European countries.²¹⁷

The United Arab Emirates consist of seven sovereign Emirates: Abu Dhabi (the capital), Dubai, Sharjah, Ajman, Umm al Qaiwan, Ras al Khaimah, and Fujairah. Dubai represents 65% of the UAE's manufactured exports. The Emirate is also constructing the new Dubai International Finance Center (DIFC), which will contain a stock exchange and amenities for financial institutions.²¹⁸ Abu Dhabi accounts for 90% of the UAE's oil production and generates approximately 60% of the country's GDP.²¹⁹

Not surprisingly, the energy sector is the largest component of the UAE economy. However, when the country's oil revenue decreased 30% during the 1998 regional oil crisis, the private sector compensated for the

taxed). The importation of certain goods such as cement and iron, is taxed 20-30%. In companies where foreigners own only part of the business, they are taxed on the portion of the income that arose from their foreign interest. *Id.*

211. *Id.* at 18.

212. *Id.* at 40.

213. *Id.* at 19. This can be done only with permission through an Amiri Decree. Applications may be submitted through the Ministry of Finance, Economy and Commerce (MFEC). *Id.* at 27.

214. *Id.* at 27.

215. United States Trade Information Center, *Investment Law: Qatar*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf>.

216. *DOING BUSINESS IN QATAR*, *supra* note 206, at 34. An exception to this rule exists where permission is granted through an Amiri Decree. The government grants these decrees when investor involvement in a project is of national significance, and when the goods necessary for the project cannot be found locally. *Id.* at 37.

217. WALTER H. DIAMOND & DOROTHY B. DIAMOND, 3 *TAX HAVENS OF THE WORLD, UNITED ARAB EMIRATES POLITICAL AND ECONOMIC STABILITY* (2003) [hereinafter *DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY*]

218. *Id.*

219. *Id.*

decline by adding 4.7% to the non-oil sector GDP.²²⁰ As leaders diversify and privatize sectors of the economy, the dependency on the oil sector has decreased. This change is made possible due to government policies aimed at reducing bureaucracy, creating free trade zones, and increasing the sale of state-owned corporate entities.²²¹

The United Arab Emirates has perhaps gone the furthest amongst all GCC members in privatizing and diversifying its economy beyond the oil sector. While oil and gas still account for 80% of the country's exports, they only comprise one-third of the country's GNP. Most of the UAE's GNP comes from manufacturing, construction, distribution, petrochemicals, and tourism.²²² The UAE has diversified its economy by launching several new manufacturing enterprises, such as a steel plant and a cable plant.²²³ The government of the UAE is also recruiting foreign firms and experts to support its efforts to develop and expand its port and airport infrastructure, foreign trade zones, hospitals, and industries.²²⁴ Investors in Abu Dhabi have concentrated their attention and resources on projects such as oil refining, gas processing, and petrochemical development.²²⁵ Most investors in the private sector have focused on the construction industry, real estate, and the service sector.²²⁶

The United Arab Emirates has a well-developed commercial banking sector that offers its customers full retail banking opportunities.²²⁷ Diversification of services within the banking sector has also made the United Arab Emirates attractive to investors. Observers expected such measures to become more profitable after the UAE stock exchange opened in March 2000.²²⁸ According to international financial reports, the UAE has emerged as a major force in Arab banking, with seventeen of its banks in the Top 100.²²⁹

Nonetheless the most attractive aspect of the UAE economy is the various free trade zones in the Emirates. The most prominent of these trade zones has been the Jebel Ali Free Trade Zone in Dubai. Created by law in September 1992, Free Zone Establishments (FZEs) operating in Jebel Ali have independent legal character and are not required to abide by domestic rules governing corporate governance and operation.²³⁰ Companies based in the zone are not required to file for municipal trade licenses or file arti-

220. FEILER, *supra* note 76, at 410.

221. See DOING BUSINESS IN THE UNITED ARAB EMIRATES, 7-9 (Price Waterhouse World Firm Service 1997).

222. DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Political and Economic Stability.

223. *Id.*

224. *Id.* at United Arab Emirates Tax Exemptions & Reductions.

225. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 9.

226. *Id.* at 24.

227. *Id.* at 43-44.

228. Eudore R. Chand, *United Arab Emirates: Movement Picks Up*, THE BANKER, Jan. 1, 2001.

229. *Id.*

230. DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Free Trade Zone.

cles of incorporation, and only one shareholder is necessary to start an FZE.²³¹ To form an FZE a company or individual must submit a completed application and questionnaire to Free Zone officials.²³² Free Trade Zones are attractive to foreign investors because they permit 100% foreign ownership of companies. The Jebel Ali Free Zone Authority also permits foreign companies to establish branches without sponsorship by a local agent.²³³ The other advantages of the Free Trade Zone include a corporate tax exemption for fifteen years (renewable for an additional fifteen years), the 100% repatriation of capital and profits, a personal income tax exemption, and nominal customs duties.²³⁴

In addition to the Jebel Ali Free Zone, the Dubai International Airport, Sharjah, and Saadiyat free trade zones in Abu Dhabi all offer distinctive investment opportunities. The simplicity in establishing and operating a business in the free zones has attracted over 100 major U.S. companies to the region.²³⁵ The Dubai International Airport is popular as an offshore banking and manufacturing center.²³⁶ The fourteen square mile free trade zone on Saadiyat Island offers a tax-free offshore financial center, a freight airport, a seaport, the opportunity for 100% foreign ownership, and 100% repatriation of profits.²³⁷ In addition, the establishment of a stock exchange (supplemented by commodities, futures, and options exchanges) in Saadiyat is expected to turn the free zone into a regional financial and commodities hub.²³⁸

There are few federal import restrictions in the United Arab Emirates, and basic foodstuffs and building materials are exempt from all duties.²³⁹ Import permits are not required on any items except arms, ammunition, and sporting rifles.²⁴⁰ In addition, export licenses are not required, documents may be invoiced in any currency, and there are no exchange controls in the Emirates.²⁴¹ Also, a foreign company that wants to export its goods to the United Arab Emirates may supply its goods directly to importers and traders if the trade volume is low.²⁴² However, a company has to appoint a

231. *Id.* at 20.

232. *Id.*

233. FEILER, *supra* note 76, at 433-34.

234. See DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Free Trade Zones.

235. *Id.* Such companies include Singer Sewing Machines, Mobil, Union Carbide, Arco, Black & Decker, M&M Mars Confectionary, Polaroid, and 3M, all of which operate in the Jebel Ali zone. U.S. companies operating in the Dubai International Airport free zone include Boeing, Dell Computer Corp., DHL, Digital Equipment Corp., IBM Corp., Samsonite, and UPS. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 46. The government levies duties of 50% on alcohol and tobacco products. *Id.*

240. WALTER H. DIAMOND & DOROTHY B. DIAMOND, FOREIGN TAX & TRADE BRIEFS, PART 5: MIDDLE EAST §1 UNITED ARAB EMIRATES TAX INFORMATION (2003) [hereinafter DIAMOND & DIAMOND, UAE TAX INFORMATION].

241. *Id.*

242. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 49.

local commercial agent to act on its behalf if it wants to establish a permanent exchange.²⁴³ While the tax laws technically apply to all corporations operating in the Emirates, only oil-producing companies are practically affected.²⁴⁴ The government does not tax companies operating in the United Arab Emirates, except for oil and gas companies, and foreign banks.²⁴⁵ The government also does not tax capital gains, dividends, sales, or the passage of estates.²⁴⁶

The UAE currency is fixed against the dollar, and the government does not impose any restrictions on the repatriation of capital and earnings.²⁴⁷ In 1991, the UAE government approved an internal memorandum that allowed offshore banks to operate as tax-free financial shelters without any currency restrictions.²⁴⁸ The primary objective behind the law is to provide sufficient financing for multinationals that have established manufacturing facilities in the United Arab Emirates. Today, there are no limitations as to the number of banks that can be admitted.

There is no central or federal development plan in the United Arab Emirates. Each Emirate has its own economic objectives and is responsible for its own industrial development policy. Companies operating in the Free Trade Zones with Free Zone licenses are not subject to UAE federal regulations.²⁴⁹ Federal regulations concerning the operation of foreign and local businesses are set out in the Federal Commercial Companies Law. Local Emiri laws contained in the UAE Commercial Transactions Codes supplement this body of Federal law.²⁵⁰

6. Oman

Oman is a traditionally liberal Middle Eastern nation and has been open to introducing reforms and encouraging foreign investment for years. Currently, the government of Oman is privatizing its utilities and developing a body of commercial law to facilitate greater foreign investment.²⁵¹ Oman joined the WTO in November 2000 and has since continued to liber-

243. *Id.*

244. DIAMOND & DIAMOND, UAE TAX INFORMATION, *supra* note 240.

245. DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Tax Exemptions & Reductions. Foreign banks operating in Abu Dhabi pay an income tax of 20% of the year's profits. *Id.*

246. DIAMOND & DIAMOND, UAE TAX INFORMATION, *supra* note 240. The exception being that Dubai imposes 10% municipal taxes on the rental value of a company manager's office premises and 5% on the rental value of the manager's personal residence. DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Tax Exemptions & Reductions.

247. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 37.

248. DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at Banking and Foreign Exchange.

249. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 35.

250. See generally DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Tax Exemptions & Reductions (discussing the different tax laws operating in the United Arab Emirates).

251. CIA World Factbook—Oman, available at <http://www.cia.gov/cia/publications/factbook/print/mu.html> (last updated Feb. 10, 2005).

alize and diversify its markets.²⁵² The country has passed several measures to support its burgeoning hotel and tourism industry, liberalize the economy, and encourage privatization in hopes that foreign investors will enter the economy and create jobs for a growing Omani population.²⁵³

The Foreign Capital Investment Law of 1994 governs foreign investment in Oman. This law provides that before any foreign national or entity invests in Omani companies, the person or entity must first obtain the Omani Ministry of Commerce and Industry's approval.²⁵⁴ One of the most recent changes in the Omani foreign investment laws is with regard to permitted foreign ownership. Currently the government permits foreigners to own up to 70% of companies in most sectors, provided that the capital invested is at least \$390,000.²⁵⁵ The new law even permits 100% foreign ownership if the capital invested is at least \$1.3 million and the project contributes to the development of the national economy.²⁵⁶ In 1993, the Omani Ministry of Commerce issued new foreign investment regulations that permitted foreigners to invest up to 65% equity investment.²⁵⁷ Foreigners are only allowed to invest at such levels in certain industries, including agriculture, construction contracting, mixed commercial services, tourism, and trade.²⁵⁸ However, commercial agency activities are still limited to 49% foreign equity. Also, the foreign investors must have at least ten years of experience in the relevant activity.²⁵⁹

Tax exemptions are granted for five years (and may be extended for an additional five years) and are available for entities engaged in designated industries.²⁶⁰ Companies that operate in these select industries may also receive customs duty exemptions on imported equipment, spare parts, and raw materials.²⁶¹ Oman does not tax an individual's personal income, dividends, interest, estate, or gifts.²⁶² To qualify for the five-year tax exemp-

252. *Id.*

253. Ros Weaver, *Cash: Property: Oman Opens Its Doors—and Shores—to Outside Investors: The Sultanate is Pinning Its Hopes on a Housing and Tourism Boom*, THE OBSERVER, Oct. 12, 2003.

254. The Omani Centre for Investment Promotion and Export Development, *Foreign Investment Law*, available at <http://www/ociped.com/investments/law.asp?ulink=1>.

255. *Id.*

256. *Id.* Whether a project contributes to the development of the national economy is based on the recommendation of the Foreign Capital Investment Committee and on whether the project is deemed to contribute to the economic development of Oman. See WALTER H. DIAMOND & DOROTHY B. DIAMOND, FOREIGN TAX & TRADE BRIEFS, PART 5: MIDDLE EAST, OMAN TAX INFORMATION § 1 (2003) [hereinafter DIAMOND & DIAMOND, OMAN TAX INFORMATION], at Oman Tax Exemptions and Reductions.

257. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Banking and Foreign Exchange.

258. *Id.*

259. *Id.* However, foreigners from the Gulf Cooperation Council countries only need five years of experience. *Id.*

260. The Omani Centre for Investment Promotion and Export Development, *supra* note 254. Tax exemptions are available for companies engaged in "manufacturing, mining, agriculture, fishing, fish processing, animal breeding, tourism, export of manufactured and reprocessed products, higher education, and public utilities." *Id.*

261. *Id.*

262. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256.

tion, a company must invest capital equivalent to \$263,000, and be involved in developmental projects in the respective sector.²⁶³ Consulting firms working under a government contract and professional individuals are also exempt from local income tax.²⁶⁴

Import permits or licenses are not necessary in Oman.²⁶⁵ However, certain products may only be imported by exclusive licensed agents.²⁶⁶ These products include arms and ammunition.²⁶⁷ Importers are no longer required to maintain a local distributor or agent.²⁶⁸ Under the recent Sultanate decree, the government permits the licensed importation and distribution of goods without requiring an agent or a commission.²⁶⁹

Other advantages to investing in Oman include a wide range of local and foreign banking, generally low customs duties of 2%, the free repatriation of capital and earnings, and a positive commercial relationship with the United States.²⁷⁰ The nation cemented its friendly relationship with the United States in 1976 when it signed the Overseas Private Investment Corporation of the United States, which guaranteed insurance protection against expropriation or nationalization, war, or revolution.²⁷¹

The government established the Oman Development Bank to support the requirements of private ventures in the mining and oil industries.²⁷² The Bank is jointly owned by the Government, Omani nationals, and foreign firms, and conducts studies and provides financial advice to potential investors.²⁷³ The Bank also provides loans to commercial ventures in agriculture, fisheries, petroleum, and minerals.²⁷⁴ The government has allocated \$345 million for interest-free loans to new manufacturing and mining companies.²⁷⁵

263. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Investment and Capital Incentives. This five-year tax holiday applies to foreign companies with 35% or more equity ownership and to all Omani-owned companies registered under the Foreign Investment Law. Income from banking, professional activities, and government contracts are not subject to the minimum 35% Omani participation requirement. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Investment and Capital Incentives.

264. *Id.*

265. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Trade Information § 2.

266. *Id.*

267. *Id.* Items such as certain dangerous drugs, fireworks, and "immoral" literature are prohibited from importation to Oman. *Id.*

268. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Tax Exemptions and Reductions.

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.* at Oman Banking and Foreign Exchange.

273. *Id.*

274. *Id.*

275. *Id.* at Oman Investment and Capital Incentives. In the Maritime Law of April 1975, the Omani Sultanate "approved the use of the Omani registry for foreign-owned and local ships without the imposition of taxes on income from international shipping." *Id.*

Since the oil sector accounts for more than 75% of Oman's GNP, the government has attempted to diversify its oil-based economy and develop other industries.²⁷⁶ Since the early 1990s the government has also begun to collect a percentage of oil revenues in a State General Reserve Fund. Furthermore, the government intends to develop its natural gas industry, and has begun planning a \$9 billion natural gas pipeline installation.²⁷⁷ The development of other natural resources such as copper have been made possible through a Saudi Arabian loan of \$200 million to assist in the development of eleven million tons of copper reserves in northeastern Oman.²⁷⁸ The government has also attempted to capitalize on its great fishing potential in the Arabian Sea.²⁷⁹

Despite the recent developments in industry and commerce, Oman continues to rely on imports for nearly all essential products in its economy. As a result, even as the government continues to diversify and modernize its economy, it is also developing greater ties with the European Union and the United States and seeks membership in the World Trade Organization. Although Oman is a relatively small country, it will continue to be significant to the future of the Middle East due to its strategic location within the shipping lanes in the Strait of Hormuz, through which one-third of western oil supplies pass.

B. Beyond the Gulf Cooperative Council: A Look at Jordan, Egypt, and Libya

1. Jordan

Following Iraq, the country that has perhaps had to bear most the burden of conflicts in the region has been Jordan. After the first Gulf war and the subsequent U.N. sanctions imposed on Iraq, the Jordanian economy suffered.²⁸⁰ Having never recovered from this economic downturn, the recent invasion of Iraq has continued to take a heavy toll on Jordan's economy and natural resources.

Today, despite the volatile state of its neighboring trade partners and regional conflict in the West Bank and Gaza, Jordan has struggled to press forward with reforms that include macroeconomic stabilization, trade liberalization, and privatization.²⁸¹ Economic reforms are also intended to

276. See *id.* at Oman Political and Economic Stability.

277. *Id.*

278. *Id.*

279. *Id.* The Arabian Sea contains ample stocks of fish, and the government has already granted some permits to foreign companies to deep-sea fish. *Id.*

280. See WALTER H. DIAMOND & DOROTHY B. DIAMOND, 2 TAX HAVENS OF THE WORLD, JORDAN POLITICAL AND ECONOMIC STABILITY (2004) [hereinafter DIAMOND & DIAMOND, JORDAN POLITICAL AND ECONOMIC STABILITY]. Following the U.N. sanctions on Iraq in August of 1990, \$1 billion worth of imported goods intended for Iraq were stranded in Jordan's warehouses. Jordan also struggled to support the influx of Iraqi refugees. Jordan has estimated that losses from its former trading partner have surpassed \$3 billion since 1990. *Id.*

281. THE WORLD BANK GROUP, COUNTRY BRIEF: JORDAN (Sept. 2004), available at <http://web.worldbank.org>.

address the youthful nature of Jordan's population. Jordan has five million young people, seventy percent of whom are under thirty years old.²⁸² To promote the integration of the young population into the economy, the Jordanian government has invested in areas of human capital development such as education, literacy, and health.²⁸³ Due to a current unemployment rate of 15%, and a labor force that is growing at 4% each year, job creation is crucial for both living standards and social stability.²⁸⁴ Consequently, the country has initiated extensive reforms to foster greater educational opportunities, to facilitate the growth of the private sector, and to attract foreign investment.²⁸⁵

Since King Abdullah's reign began, Jordan has pushed for accession to the WTO and for the establishment of free trade agreements with the United States and Europe²⁸⁶ while taking grave steps to encourage foreign investment and trade. Since the late 1990s, the nation has revived several privatization programs that have spurred foreign investment in the Jordanian telecommunications and transportation industry, and in industrial and power projects.²⁸⁷

The U.S.-Jordan Free Trade Agreement was a key step toward trade integration with the United States. It included a gradual phasing out of import duties over a ten-year period ending in January 2010, and the gradual establishment of an overall free trade area.²⁸⁸ Today, the government has eliminated 83% of all tariffs in all major product categories. Observers expect that figure to reach 95% of all tariffs by January 2005.²⁸⁹ Additionally, the Jordanian government has entered into a Free Trade Agreement with the EU, which will be created by 2014.²⁹⁰

Since the commencement of Jordan's privatization programs, private companies have acquired major stakes in the Jordan Telecommunications Company, and the Arab Potash Company.²⁹¹ Further, the government is currently seeking a foreign partner to buy up to a 49% stake of its operating division in Royal Jordanian Airlines.²⁹²

For the most part, the government has reformed Jordan's investment laws to encourage liberalized trade and investment by treating foreign and

282. *Id.*

283. The Hashemite Kingdom of Jordan, *Human Resources* (2004), available at <http://www.kinghussein.gov.jo/resources.html>.

284. THE WORLD BANK GROUP, *supra* note 281.

285. *Id.*

286. See Jordan Free Trade Agreement Act, Pub. L. No. 107-143, 115 Stat. 243, 19 U.S.C. 2112 (2001). The Jordan Free Trade Agreement provides for preferential tariff treatment, the elimination of duties, the protection of intellectual property rights, and the promotion of transparency in international trade agreements. *Id.*

287. United States Trade Information Center, *Investment Climate: Jordan*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf> [hereinafter *Investment Climate: Jordan*].

288. United States Trade Information Center, *Economic Trends and Outlook: Jordan*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf> [hereinafter *Economic Trends and Outlook: Jordan*].

289. *Id.*

290. *Id.*

291. See *id.*

292. *Id.*

local investors equally.²⁹³ For instance, Jordan is one of the only Middle Eastern countries to permit foreigners to own 100% of all public shareholding companies, closely held corporations, and partnerships that operate in the fields of manufacturing, tourism, and nontrade services.²⁹⁴

Furthermore, foreigners can exploit investment incentives such as tax and customs duties exemptions in the country's three development areas.²⁹⁵ The three zones offer exemptions that vary according to the area's level of development.²⁹⁶ Zone C encompasses all agricultural, maritime transport, and railway investments.²⁹⁷ Zone A is a conglomeration of hotel, tourism, leisure, recreational facilities, and convention centers.²⁹⁸ Particular trade advantages include ten-year exemptions from income and social services taxes for projects approved by the Investment Promotion Committee.²⁹⁹ Such advantages include a 100% tax exemption for the first five years of investment and business engaged in industrial areas of Zone A, and a 40% exemption for the next two years.³⁰⁰ Zone B projects are 100% tax-exempt for eight years and Zone C provides for 100% tax exemption for twelve years.³⁰¹

In addition to offering tax incentives in the designated zones, the government has designated a large portion of the port of Aqaba as a free trade zone.³⁰² Merchandise imported into Jordan can be stored in the free trade zone for delivery to any neighboring markets.³⁰³ To engage in free trade zone activities, the companies must be new to Jordan, adopt modern technology, use local raw materials, and improve labor skills.³⁰⁴ Aqaba offers the benefits associated with all regional modern seaports, without the congestion typically associated with neighboring ports. Furthermore, Jordan's modern highway system encourages the importation of goods destined for Saudi Arabia, the Gulf States, and Syria.³⁰⁵ Currently, the port of Aqaba is also expected to continue developing as a tourist destination with several

293. *Investment Climate: Jordan*, *supra* note 287. However, Regulation No. 54 of 2000 lists several exceptions to this general rule. Foreign investors may not own a majority stake in projects in construction and contracting, wholesale and retail trade, transport, wastewater treatment, food services, travel agent services, and import-export services. *Id.* Yet under the terms of the Jordan-U.S. Free Trade Agreement, foreign investors are limited to 60% ownership in publishing, aircraft maintenance, and repair services. *Id.*

294. DIAMOND & DIAMOND, JORDAN POLITICAL AND ECONOMIC STABILITY, *supra* note 280, at Jordan Investment and Capital Incentives.

295. *Id.*

296. *Id.*

297. United States Trade Information Center, *Performance Requirements/Incentives: Jordan*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf/f41c595bf093a662852566f2004cfcf6/83ca390b3e7f7fb785256f150064cb3e?OpenDocument>.

298. *Id.*

299. *Id.*

300. DIAMOND & DIAMOND, JORDAN POLITICAL AND ECONOMIC STABILITY, *supra* note 280, at Jordan Investment and Capital Incentives.

301. *Id.*

302. *Id.* at Jordan Free Trade Zone.

303. *Id.*

304. *Id.*

305. *Id.*

new resorts and hotels.³⁰⁶ While regional instability has caused a downturn in tourism in the past, tourism has recently rebounded, and western tourist travel has increased by 60% in the first quarter of 2004.³⁰⁷

The Jordanian Commercial and Civil Codes govern commercial transactions in Jordan.³⁰⁸ The Jordanian Constitution stipulates that the judiciary is independent of other branches of government, and that commercial transactions are resolved in secular courts.³⁰⁹ Under the Investment Promotion Law of 1995, foreign investors may choose alternative dispute resolution methods or an internationally recognized settlement of disputes.³¹⁰ In addition to abiding by WTO dispute settlement mechanisms, Jordan is a member of the International Center for the Settlement of Investment Disputes and the New York Convention of 1958, which recognizes and enforces foreign arbitral awards.³¹¹ The government offers loans at low interest rates and provides free guidance to foreign companies interested in investing in Jordan.³¹² King Abdullah has also asserted that he needs to reduce the "red tape" associated with his nation's government agencies to attract more foreign investment.³¹³ Consequently, since assuming leadership, he has promoted national administrative reform, government transparency and accountability, and the advancement of civil liberties.³¹⁴

Today, with the assistance of new trading partners and King Abdullah's leadership, Jordan continues to steadily press forward economic reforms. Since Jordan has had to bear much of the impact of regional instability in the region, the United States and other European nations have pledged economic and military aid.³¹⁵ In addition, the United States has relieved Jordan of over \$420 million of the Kingdom's debt.³¹⁶ Despite the regional unrest due to the ongoing violence and instability in Iraq, the U.S. Trade Information Center reports that Jordan's resilient economy grew at a decent rate of 3.2% in 2003.³¹⁷

2. Egypt

The U.S. Trade Information Center estimates that the Iraq war cost the

306. See *Economic Trends and Outlook: Jordan*, *supra* note 288.

307. *Id.*

308. See *Jordan*, Countrywatch.com, available at http://aol.countrywatch.com/aol_print.asp?vCOUNTRY=87&SECTION=COVER&TOPIC=INFIC&TYPE=TEXT.

309. *Id.*

310. United States Trade Information Center, *Dispute Settlement: Jordan*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf/f41c595bf093a662852566f2004cfcf6/3a9fc7251e50c6a585256f15005a8032!OpenDocument>.

311. *Id.*

312. DIAMOND & DIAMOND, JORDAN POLITICAL AND ECONOMIC STABILITY, *supra* note 280, at Jordan Investment and Capital Incentives.

313. *Id.* at Jordan Political and Economic Stability.

314. *Id.*

315. *Id.*

316. *Id.*

317. *Economic Trends and Outlook: Jordan*, *supra* note 288.

Egyptian economy nearly \$1 billion.³¹⁸ Economic performance over the past three years reflects difficulties following September 11th and the Iraqi conflict. Today, the IMF reports that Egypt has begun to recover from an economic downturn caused by both these events and several regional conflicts.³¹⁹

IMF directors have recommended that the government reduce unemployment by undertaking structural reforms aimed at expanding the growth of the private sector.³²⁰ With unemployment estimated at nearly 10%, job creation remains a top priority.³²¹ In order to achieve and sustain economic growth that will facilitate job creation, the government has made efforts to promote domestic investment and increase efficiency and integration into the global trading system.

In June 2001, Egypt signed a Partnership Agreement with the EU, which entered into force on January 1, 2004.³²² The agreement will grant Egyptian exporters increased access to the European market, and will gradually phase out tariffs and other barriers to European exports.³²³ The agreement also includes nearly 615 million Euros in project assistance grants and 1.1 billion Euros in loans designed to help modernize Egyptian industries.³²⁴ The EU remains Egypt's largest trading partner, typically accounting for nearly 35-40% of imports and exports.³²⁵ It is estimated that once the Partnership Agreement with the EU is implemented, there will be a significantly larger volume of trade between Egypt and the EU.³²⁶

The United States is Egypt's largest single-nation trading partner; it accounts for nearly 20% of imports and 11% of exports.³²⁷ The U.S. Department of Commerce estimated that at the end of 2001, total U.S. direct investment in Egypt was \$3.068 billion.³²⁸ Since 1992, the United States and Egypt have acted according to a Bilateral Investment Treaty that provides for nondiscriminatory treatment for investors from both nations.³²⁹ The treaty includes provisions for international legal standards on expropriation and compensation, and accepted procedures for the settlement of investment disputes such as international arbitration.³³⁰ In 1999, Egypt and the United States signed a Trade and Investment Frame-

318. *Stat-USA Egypt Country Commercial Guide FY 2004: Economic Trends and Outlook*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf> [hereinafter *Stat-USA*].

319. *Egypt: 2004 Article IV Consultation Staff Report*, International Monetary Fund Country Report No. 04/69, available at <http://www.imf.org/external/np/sec/pn/2004/pn0469.htm>.

320. *Id.*

321. *Id.*

322. See Protocol to the Euro-Mediterranean Agreement Between the European Communities and their Member States and the Arab Republic of Egypt, OJ 2005 L31/31.

323. *Stat-USA*, *supra* note 318.

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.* at Egypt Investment Climate.

329. *Id.*

330. *Id.*

work Agreement intended to increase American investment in Egypt's markets.³³¹

Tourism is Egypt's largest foreign exchange earner, yet it is an industry that is most susceptible to instability resulting from regional conflicts such as unrest in Israel and the Palestinian territories and the Iraqi conflict. A 2001 report by the Egyptian Center for Economic Studies suggested that tourism accounted for nearly 11% of Egypt's GDP. Tourism revenues dropped 22% in March 2003 at the start of the Iraq War.³³² Fortunately, the industry rebounded in April and May of last year, and if the region stabilizes politically, the government estimates that tourist arrivals could increase to 9.5 million per year by 2005.³³³

Like several nations in the region, the Egyptian government hopes to continue its economic reforms without diverting resources to resolve regional political instability. The Parliament approved key legislation in 2003, including the Telecom Regulatory Authority Law in February and a Unified Banking Law in May.³³⁴ Egypt's Telecom Law expands the power of the National Telecom Regulatory Authority to issue licenses and permits, and includes provisions to protect users' rights.³³⁵ The law complies with Egypt's obligation as a member of the WTO to end Telecom Egypt's monopoly of fixed-line services.³³⁶

Unlike the tourism industry, the energy sector, surprisingly unaffected by the regional instability, has exhibited positive growth over the past few years. Gas production and reserves have increased approximately 75% during the past five years.³³⁷ Gas reserves have nearly tripled over the past decade, and Egypt has sought to conserve the gas surplus by converting 81% of its thermal power plants to gas.³³⁸ Since new natural gas discoveries are outpacing domestic demand, the government is seeking to develop its export capacity for gas.³³⁹ Oil discovery has also produced lucrative results for investors. In May 2003, BP announced it had discovered a huge oil reserve in the Gulf of Suez that contained an estimated reserve of 80 million barrels and an expected average flow rate of 40,000-50,000 barrels per day.³⁴⁰

To facilitate foreign investment and to alleviate domestic business disputes, Egypt has promoted alternative methods of dispute resolution and arbitration. The nation acceded to the International Convention for the Settlement of Investment Disputes³⁴¹ (ICSID) in 1971, and is a member of

331. *Id.* at Egypt Economic Trends and Outlook.

332. *Id.* This is in comparison to the figures for tourism revenue in March 2002. *Id.*

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*

341. Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Oct. 14, 1966.

the International Center for the Settlement of Investment Disputes,³⁴² which provides a framework for the arbitration of investment disputes between the host government and the foreign investor.³⁴³ The government also enacted Law 8 of 1997, which recognizes the right of investors to settle disputes within the framework of bilateral agreements, the ICSID, or through international commercial arbitration.³⁴⁴

3. Libya

The United States imposed sanctions on Libya in 1986 and, until recent months, has barred trade and travel to Libya by U.S. citizens. The policy behind the Iran and Libya Sanctions Act of 1996 (ILSA) with respect to Libya was to seek full compliance by Libya with its obligations under U.N. Resolutions 731,³⁴⁵ 748,³⁴⁶ and 883,³⁴⁷ which include ending all support for alleged acts of international terrorism and alleged efforts to develop or acquire weapons of mass destruction.³⁴⁸

Since those resolutions, international efforts evolved into attempts to reopen diplomatic ties with Tripoli. Libya has accepted "civil responsibility" for the actions of Libyan officials in the 1988 Pan Am Flight bombing over Lockerbie, Scotland, pledged to cooperate with the United Nations regarding the investigation of the bombing, renounced terrorism, and signed the Comprehensive Nuclear Test Ban Treaty in January of 2004.³⁴⁹ The United States responded to Libya's diplomatic efforts by sending the first U.S. Congressional delegation to Libya since 1969 and announcing that it would place a diplomat in Libya for the first time since closing the U.S. embassy in 1980.³⁵⁰

On September 20, 2004 President Bush issued an Executive Order that terminated sanctions against the government of Libya.³⁵¹ The President also revoked Executive Order 12,538 of November 15, 1985, which prohibited the importation into the United States of petroleum products refined

342. See INT'L. CENTER FOR SETTLEMENT OF INVESTMENT DISPUTES, ICSID CONVENTION, REGULATIONS AND RULES (2003).

343. See *Stat-USA*, *supra* note 318, at Egypt Investment Climate.

344. *Id.*

345. S.C. Res. 731, U.N. SCOR, 47th Sess., 3033d mtg., U.N. Doc. S/RES/731 (1992).

346. S.C. Res. 748, U.N. SCOR, 47th Sess., 3063d mtg., U.N. Doc. S/RES/748 (1992).

347. S.C. Res. 883, U.N. SCOR, 48th Sess., 3312th mtg., U.N. Doc. S/RES/883 (1993).

348. Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, 110 Stat. 1541, 104 H.R. 3107 (1996), at § 3(b) "Declaration of Policy" (codified at 50 U.S.C. § 1701).

349. See generally Lisa Anderson, *Pan Am 103 Families Fear That Accepting Cash Absolves Gadhafi*, THE CHICAGO TRIBUNE, Feb. 24, 2004, at Zone C, p. 1 (providing a timeline of U.S.-Libyan diplomatic relations).

350. See Colum Lynch, *Powell Holds Talks with Libya's Foreign Minister*, WASH. POST., Sept. 24, 2004, at A17 (describing improving diplomatic exchanges between the United States and Libya).

351. Exec. Order No. 13,357, 69 Fed. Reg. 56, 665 (Sept. 20, 2004) (titled "Termination of Emergency Declared in Executive Order 12,543 with Respect to the Policies and Actions of the Government of Libya and Revocation of Related Executive Orders"), available at <http://www.whitehouse.gov/news/releases/2004/09/20040920-5.htm>.

in Libya.³⁵² In addition, the Order removed all blocks on property and interests in property that had been blocked under the Libya Sanctions Regulations.³⁵³ Yet Libya still remains on the American list of states that allegedly sponsor terrorism, which bars the reinstatement of full diplomatic relations.³⁵⁴ Consequently, the export of military and security related materials to Libya will continue to be restricted.³⁵⁵ Nevertheless, the Libyan economy will gain tremendously from the removal of economic restrictions on aviation, the reinstatement of direct flights from the United States, and increased U.S. investment.³⁵⁶

C. An Examination of Limited, Yet Lucrative Opportunities in a Sanctioned and Steadily Growing Iranian Economy

The Iran and Libya Sanctions Act of 1996 (ILSA) was intended in pertinent part:

[t]o impose sanctions on persons making certain investments directly and significantly contributing to the enhancement of the ability of Iran or Libya to develop its petroleum resources, and on persons exporting certain items that enhance Libya's weapons or aviation capabilities or enhance Libya's ability to develop its petroleum resources, and for other purposes.³⁵⁷

In addition to the unilateral sanctions imposed by the United States on Libya and Iran through the ILSA, the Act also calls for multilateral and "Enhanced Sanction[s]"³⁵⁸ on U.S. allies that trade with Iran and nationals of foreign countries who invest \$40 million or more in Iran's petroleum sector within any twelve month period.³⁵⁹ The Act was basically designed to deter U.S. nationals, allies, and foreign companies from doing business with and investing in Libya and Iran.³⁶⁰ While President Bush's Executive Order terminated sanctions against Libya,³⁶¹ the sanctions remain with respect to trade with Iran.

1. Iran

The ILSA is intended to deny Iran the ability to explore, extract, refine, or transport its oil resources.³⁶² These sanctions developed after political and diplomatic tensions that escalated between Iran and the United States following the Islamic Revolution of 1979.

352. See *id.*

353. Libya Sanctions Regulations, 31 C.F.R. § 550 (2004).

354. Steven R. Weisman, *U.S. Lifts Trade Embargo on Libya in Return for Promise on Arms*, N.Y. TIMES, Sept. 21, 2004, at A7 (discussing the implications of President Bush's Executive Order revoking economic sanctions on Libya and the limitations on trade relations with the Arab nation based on alleged state-sponsorship of terrorism).

355. See *id.*

356. See *id.*

357. Iran and Libya Sanctions Act of 1996.

358. *Id.* § 4(d).

359. *Id.* § 5(a).

360. See *id.*

361. Exec. Order No. 13,357, 69 Fed. Reg. 56.

362. Iran and Libya Sanctions Act of 1996 §3(a).

In 1979, a revolution overthrew the Pahlavi monarchy and established an Islamic Republic under the political control of Islamic clerics. Following the Islamic Revolution, the Iranian government isolated itself economically and politically. A largely state-run economy and subsidized oil industry resulted in high levels of inflation, unemployment (currently at nearly 16%), and the rise of internal political factions. Following the Revolution, the new government nationalized banks and industries such as the petroleum, transportation, utilities, and mining sectors.³⁶³ Currently, Iran's economy is a mixture of state-owned enterprises, village agriculture, and smaller private service ventures.³⁶⁴

Over the past five years there have been efforts by reformists in the government to privatize and liberalize the ailing economy. Reformist President Mohammad Khatami has followed the market reform plans and indicated that he will continue to diversify the oil-based economy.³⁶⁵ The United States welcomed such reforms, and the Clinton Administration responded in March 2000 by loosening import restrictions.³⁶⁶ Former Secretary of State Madeline Albright announced that the United States would relax sanctions to permit Americans to import Iranian carpets and foods.³⁶⁷

In addition, the U.S. Treasury Department, pursuant to President Clinton's loosening of U.S. import restrictions, has authorized commercial sales of food, medicine, and medical equipment to Iran.³⁶⁸ Under this export policy, the Office of Foreign Assets Control (OFAC) issues licenses on a case-by-case basis. The government permits such sales to approved buyers, such as private individuals, nongovernmental entities, and government procurement bodies identified by OFAC. Additionally, the government will permit licensed Americans to broker and sell bulk agricultural commodities.³⁶⁹ The regulations limit payment to advanced cash, sales on open accounts, or financing by third country banks.³⁷⁰

Nevertheless, this policy amendment did little to loosen the restric-

363. See U.S. Dep't of State, Bureau of Near Eastern Affairs, *Iran Profile August 2004*, at <http://www.state.gov/r/pa/ei/bgn/5314.htm>.

364. *Id.*

365. *Id.*

366. See Madeleine K. Albright, *Remarks Before the American-Iranian Council* (Mar. 17, 2000) (noting that "President Clinton eased restrictions on the export of food, medicine, and medical equipment to sanctioned countries including Iran"), at 367, at <http://secretary.state.gov/www/statements/2000/000317.html>.

367. See *id.*

368. United States Trade Information Center, *Sanctions Lifted on Food, Medicine and Medical Equipment to Iran*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf/> (declaring that pursuant to President Clinton's statement on April 28, 1999, the U.S. Treasury Department announced it would authorize the sale of food, medicine, and medical equipment to Iran, Libya, and Sudan under existing unilateral sanctions regimes).

369. See *id.*

370. See *id.*

tions on exports from the United States.³⁷¹ While the American government continues to restrict exports to Iran, it has not fully enforced the ILSA and has occasionally granted a "waiver" of the ILSA when dealing with its allies.³⁷² Pressure from U.S. allies in the European Union and Asia in the WTO has resulted in the limited application of the extraterritorial sanctions outlined in the ILSA.³⁷³

Iran currently engages in the large-scale privatization of its telecommunications and banking sectors, and is preparing for the gradual introduction of these private entities onto the Tehran Stock Exchange (TSE).³⁷⁴ The IMF contends that such measures have successfully boosted Iran's economy as the nation's levels of foreign investment and economic reforms have grown at the highest rate in the Middle East and North Africa over the past few years.³⁷⁵ Much of the growth is attributed to the establishment of the Oil Stabilization Fund in 2001, the diversification and growth of non-oil industries, the reformation of the state subsidy system, and the privatization of the banking and insurance industry.³⁷⁶ While banks were removed from the stock exchange listings following the Islamic Revolution, the Tehran Stock Exchange council passed a 2002 law permitting the admission of the banks.³⁷⁷ According to Iranian financial experts, the main purpose behind the privatization of the banks is to improve transparency in the financial sector and to increase competition.³⁷⁸

Despite ongoing U.S. sanctions, Iran is currently headed toward an era of economic liberalization and diversification necessary to open its markets to foreign business and sustain the needs of its growing population.³⁷⁹

371. See generally Iranian Transactions Regulations, 65 Fed. Reg. 25, 642 (May 3, 2000) (codified at 31 C.F.R. § 560) (providing the statutory means for export restrictions to Iran).

372. See Madeleine K. Albright, *Statement on ILSA: Decision in the South Pars Case*, available at <http://www.aghayan.com/ilsw051898.htm>. An ILSA waiver was granted on May 18, 1998 by the former Secretary of State Madeleine K. Albright regarding the development of the South Pars Gas Field in Iran by Total (France), Gazprom (Russia), and Petronas (Malaysia). *Id.*

373. See generally Wynn H. Segall, *Running on Empty: U.S. Economic Sanctions and Export Controls in 1997*, 32 INT'L L. 271 (1998) (asserting that the U.S. executive branch has hesitated to promulgate any extraterritorial tactics like those embodied in the Helms-Burton and ILSA sanctions of 1996 against Cuba, Iran, and Libya due to their problematic enforcement). Currently there is an ongoing debate in Congress regarding sanctions and export controls, and a conflict has arisen between U.S. business interests abroad, U.S. national security interests, and international law. Consequently, U.S. strategic initiatives to isolate rogue nations, such as Iraq and Iran, have lost ground since the sanctions were enacted. See *id.*

374. See generally Stephen Timewell, *A New Economic Era for Iran*, THE BANKER, Dec. 1, 2004 (providing a positive assessment of privatization prospects).

375. See Minister Says Much Efforts Needed To Raise Iran's Economic Growth Rate, BBC WORLDWIDE MONITORING: THE MIDDLE EAST, Aug. 23, 2003.

376. See IMF Commends Iran's Good Intentions, THE MIDDLE EAST ECONOMIC DIGEST, Oct. 5, 2001.

377. Stephen Timewell and Mohsen Asgari, *Iran Pushes for Privatization*, THE BANKER, Dec. 1, 2003, at 95.

378. *Id.* at 96.

379. See generally *Fewer Means Better*, ECONOMIST, Aug. 5-11, 1995, at 41 (discussing Iran's population growth).

Currently Iran is prepared to sign an agreement with the GCC to establish a free trade zone in the region. The Saudi Arabian minister of commerce and industry supports Iran's plans to set up a free trade zone between Iran and its Arab neighbors, and encouraged Iran to exploit trade opportunities within the GCC.³⁸⁰

In 1995, the "Law for Attraction and Protection of Foreign Investment" was the first specific foreign investment law enacted by Iran's legislature since the Islamic Revolution. This law aimed to encourage additional foreign investment.³⁸¹ Additionally, in 1993 the Iranian Parliament enacted a law that exempts foreign investors in certain regions from paying taxes for a period of fifteen years.³⁸² This law guarantees the rights of foreign investors.³⁸³ Furthermore, according to this law, the government will not apply customs duties and commercial benefit taxes to any goods imported into the country.³⁸⁴

The Iranian economy experienced limited growth from the reforms spelled out in the initial five-year economic plan, and has since engaged in fundamental economic reforms. The recent Socio-Economic and Cultural Development Plan of 2000-2004 includes measures to privatize government-controlled industries and to introduce private entities onto the TSE.³⁸⁵ These dramatic measures were introduced to cure an ailing economy of a nation that ironically has one of the world's largest oil and natural gas reserves and some of the most strategic ports and waterways, but is lagging in the global marketplace.

Chapter Three of the Third Socio-Economic and Cultural Development Plan of 2000-2004 includes reforms primarily aimed at privatization and the transfer of control of state-owned enterprises.³⁸⁶ This chapter calls for the transfer of the shares and stocks of the designated state-owned enterprises "whose continued operation in the public sector seems to be unnecessary."³⁸⁷ The scope of the enterprises due to be privatized appear to be limited to those sectors that do not jeopardize the national security or create a monopoly, and the privatization of which promotes public management.³⁸⁸ Chapter Ten of the Third Socio-Economic and Cultural Development Plan of 2000-2004 addresses the crucial reforms necessary to reorganize the financial markets.³⁸⁹ Under this plan, the Iranian central

380. Iran, Saudi Arabia Discuss Trade at Joint Economic Commission Meeting, BBC MONITORING MIDDLE EAST, Mar. 14, 2004.

381. *Status of Foreign Investments in Iran*, at <http://iranlaw.online.fr/laws2.html#f%20investments>.

382. *Free Trade Zones, Message from the Iranian Secretariat of the High Council of Free Trade-Industrial Zones*, full text available at <http://www.salamiran.org/Economy/FreeZones/FTZ.html>.

383. *Id.*

384. *Id.*

385. *Iran's Third Socio-Economic and Cultural Development Plan of 2000-2004*, full text available at http://www.salamiran.org/Economy/third_plan.html.

386. *See id.* at ch. 3.

387. *Id.* at ch. 3, art. 9.

388. *Id.* at ch. 3, art. 10 §§ (a), (b), (c), (d), (e), (f).

389. *Id.* at ch. 10.

bank is authorized to issue bonds to creditors to enhance their ability to compete in the international banking sectors.³⁹⁰ The law also creates a computerized network for the capital market set up by the Stock Exchange that will foresee electronic transactions and provide national and international information.³⁹¹

More liberal trade laws not confined by the limitations of the Constitution are offered in the three Free Trade-Industrial Zones established by Parliament under the Free Zones Act of 1993.³⁹² These zones are managed according to their own laws and operate outside the domain of Iranian customs authorities. The Kish Island, Qeshm Island, and Port of Chabahar Free Trade Zones provide incentives to investors such as a fifteen-year tax holiday, exemption from customs duties, 100% foreign investment and repatriation of capital and profit, offshore banking, and no entry visa requirement for foreigners.³⁹³

Recent IMF reports suggest that Iran's economy has grown significantly over the last four years due to key structural reforms implemented since the beginning of the Third Five-Year Development Plan (2000-2004).³⁹⁴ The IMF credits greater confidence in the economy and a rise in private sector activity as the primary reasons for Iran's economic growth.³⁹⁵ During the first four years of the Third Five-Year Development Plan, real GDP grew by an average of 5.6%, external debt was reduced to extremely low levels, and the unemployment rate declined.³⁹⁶ The IMF supported the country's goal of developing the private sector and international trade. The IMF also respected the government's simultaneous efforts to lobby for the key reforms featured in the Fourth Five-Year Development Plan.³⁹⁷

III. The Future of U.S. Business in a Promising Region and a Global Economy

A. Expanding Business Interests Through Mutual Understanding and Credibility

As Middle Eastern nations implement economic and legal reforms aimed at liberalizing their trade policies and attracting foreign investors, the region as a whole benefits from the fruits of the global economy in the form of social and political stability. Consequently, major Middle Eastern trading partners such as the EU and the United States continue to take advantage of these expanding economic opportunities and create long-term stakes in the region. Yet transitioning to a global marketplace should be

390. See *id.* at ch. 10, art. 92.

391. *Id.* at ch. 10, art. 94.

392. See *Free Trade Zones*, *supra* note 382.

393. *Id.*

394. IMF Concludes 2004 Article IV Consultation with the Islamic Republic of Iran, International Monetary Fund Country Report No. 04/109, available at <http://www.imf.org/external/np/sec/pn/2004/pn04109.htm>.

395. See *id.*

396. *Id.*

397. *Id.*

second nature for nations with deep roots in a history of trade since the threads of the silk trail connected continents and people over centuries ago. Such history has thus laid the foundation for the current growth and economic revival in the region. For the most part, the nations of the Middle East have addressed new legal issues regarding trade and commerce much like the "ulama" pragmatically and through general consensus, addressed rising issues outside the confines of the Shari'a hundreds of years ago. Today, this sense of cultural pragmatism and flexibility has fundamentally assisted these nations in adjusting to political instability, reforming their economies, and seriously competing in the global marketplace.

In 1997, an International Monetary Fund Official stated:

Remarkable changes are taking place in economic attitudes and policies in many Middle Eastern . . . countries. These changes reflect a switch to a strategy that, instead of trying to protect economies from the rest of the world, seeks to take advantage of opportunities offered by participating in the global economy.³⁹⁸

Many in the region and abroad predicted grim economic consequences on the Middle Eastern economies following the U.S. invasion of Iraq. The nations of that region responded cautiously to the Iraqi conflict³⁹⁹ in order to prevent economic instability. Yet, many of the largest exporters in the region saw their incomes increase by nearly 30%.⁴⁰⁰ This includes Saudi Arabia, whose government achieved a surplus of \$12 billion and a balanced budget.⁴⁰¹ The All-Arab Index, which tracks the share prices of 79 stocks in 12 Arab countries, grew 50% in 2003.⁴⁰² The IMF also predicted that economic growth in the region following the war would be around 5% for most Middle Eastern countries.⁴⁰³

Since the Iraqi invasion, the United States has sought to actively increase trade and investment in Middle Eastern nations in order to ease the strains of political instability in the region. By creating Trade and Investment Framework Agreements (TIFAs), Bilateral Investment Treaties (BITs), and Free Trade Agreements, the United States has sought to

398. Stanley Fischer, *Economic Reform and Growth: Progress and Challenges in Middle East Countries*, 20 MIDDLE EAST EXEC. REP. 4, 9 (1997).

399. George Abed et al., *International Monetary Fund Press Briefing on the Economic Outlook in the Middle East and North Africa*, Sept. 18, 2003 (noting that these measures included tightening of fiscal accounts, adding to reserves, and undertaking economic reforms to ease dependence on energy sector). Transcript available at <http://www.imf.org/external/np/tr/2003/tr030918a.html>.

400. See *Improving?*, ECONOMIST, Jan. 3, 2004, at 32 (discussing the pre-war apprehension in Middle Eastern nations regarding the possible negative economic consequences of the Iraqi invasion and revealing the actual positive post-war economic gains achieved in neighboring countries).

401. *Id.*

402. *Id.* Reports indicate that following the end of the Iraqi invasion, Kuwaiti shares doubled in value, Saudi Arabia's increased by 74%, and the Cairo exchange gained 60%. *Id.*

403. Abed et al., *supra* note 399. The Middle Eastern region in this report is said to include Pakistan, Afghanistan, Iran, and all twenty-one Arab countries including the Palestinian territories. *Id.*

enhance its economic stake in the Middle East in order to improve long-term diplomatic relations and stability in the region.⁴⁰⁴ Since launching the Middle East Free Trade Initiative, the Bush administration has signed Trade and Investment Framework agreements with Saudi Arabia,⁴⁰⁵ Egypt,⁴⁰⁶ Kuwait,⁴⁰⁷ Bahrain,⁴⁰⁸ the United Arab Emirates,⁴⁰⁹ Qatar,⁴¹⁰ and Oman.⁴¹¹ Trade and Investment Framework Agreements are intended to protect investors and intellectual property, and promote commercial transparency and efficiency.⁴¹² The United States also views TIFAs as a way to promote investor confidence in the signatory's markets and expand American exports to that market.

Currently the United States' only free trade agreements in the Middle East are with Israel and Jordan, although it has begun free trade negotiations with Bahrain and Morocco.⁴¹³ The recent U.S.-Bahrain FTA Congressional Caucus, which should be complete by the end of 2004, is aimed at expanding export opportunities for American farmers, workers, and businesses.⁴¹⁴ Since the beginning of trade agreements with the United States, Bahrain has joined the WTO Information Technology Agreement, committing to zero tariffs in computer and telecommunications. It has also taken steps to implement the World Intellectual Property Organization Internet treaties, liberalized its telecommunications market, and passed legislation promoting transparency in its commercial and legal systems.

404. United States Trade Representative, *Middle East Free Trade Initiative*, available at <http://www.ustr.gov/new/fta/Morocco/2004-03-02-middleeast-factsheet.pdf> [hereinafter *Middle East Free Trade Initiative*]. The Middle East Free Trade Initiative outlines the Bush Administration's regional plan for economic growth and trade relations in the Middle East. Measures taken by the Administration to achieve this agenda include establishing Bilateral Investment Treaties and Free Trade agreements with nine Middle Eastern nations, and supporting Saudi Arabia, Lebanon, and Yemen in their attempts to achieve WTO accession.

405. *Id.*

406. *Id.*

407. Press Release, United States Trade Representative, United States and Kuwait Sign Trade and Investment Framework Agreement (Feb. 6, 2004), available at <http://www.ustr.gov/releases/2004/02/04-06.pdf>.

408. Press Release, United States Trade Representative, Zoellick Joins Launching of U.S.-Bahrain FTA Congressional Caucus (Mar. 3, 2004), available at <http://www.ustr.gov/releases/2004/03/04-16.pdf> [hereinafter Press Release, Bahrain FTA Caucus].

409. Press Release, United States Trade Representative, United States and United Arab Emirates Sign Trade and Investment Framework Agreement (Mar. 15, 2004), available at <http://www.ustr.gov/releases/2004/03/04-18.pdf>.

410. Press Release, United States Trade Representative, United States and Qatar Sign Trade and Investment Framework Agreement (Mar. 19, 2004), available at <http://www.ustr.gov/releases/2004/03/04-23.pdf>.

411. Press Release, United States Trade Representative, United States and Oman Sign Trade and Investment Framework Agreement (July 7, 2004), available at http://www.ustr.gov/Document_Library/Press_Release/2004.

412. See *Middle East Free Trade Initiative*, *supra* note 404.

413. *Id.*

414. Press Release, Bahrain FTA Caucus, *supra* note 408. The U.S. Trade Representative reports that American goods exported to Bahrain in 2003 totaled \$509 million. American agricultural commodities such as U.S. meats, fruits, vegetables, cereals, and dairy products would also benefit from the Agreement. *Id.*

Additionally, the United States has worked to expedite accession to the WTO with nations such as Saudi Arabia and Lebanon. The Bush Administration hopes that such initiatives will eventually lead to the establishment of a Middle East Free Trade Area by 2013.⁴¹⁵ The United States is attempting to create this Free Trade Zone by actively supporting WTO membership for countries like Saudi Arabia and Lebanon, and helping current Middle Eastern WTO members implement trade agreements.⁴¹⁶

Experts agree that increased trade and investment in the Middle East will facilitate growth, job creation, and a dynamic economy that no longer depends on oil. To realize these goals, Middle Eastern nations are reaching out to the world community and brokering ties by way of trade and investment integration. Such ties have recently gained momentum in the form of Free Trade initiatives and agreements with the EU and United States, and will inevitably foster greater diplomacy and mutual understanding, thus creating diverse international stakes in a region that will over time be a stabilizing force in a landscape often vulnerable to the international appeal of its gas and oil industries. However, liberal trade and investment agreements must be accompanied by a thorough and mutual understanding of the rich history, culture, and diverse economies that compose the Middle East.

The ABCGC works with the United States Chamber of Commerce and American businesses to assist and support the expansion of trade between American and Middle-Eastern businesses.⁴¹⁷ The ABCGC was established in 1989, and has since assumed the role of promoting American business in the Gulf Region.⁴¹⁸ The ABCGC is an affiliate of the United States Chamber of Commerce and composed of nine American Chambers of Commerce operating in the Gulf region. The ABCGC represents more than 750 U.S. companies conducting business in the Gulf. This voluntary organization has sought to improve American economic relations with the GCC countries by encouraging trade, investment, cross-cultural exchange, and mutual understanding.⁴¹⁹

Recognizing the dynamic trade opportunities available in the Middle East is a major step towards improving business relations with those nations. Growing competition from Europe and Asia requires American businesses to understand the cultural and legal background in the Middle East. Further, fostering trade and investment in the region is fundamental to restoring stability in the Middle East and ultimately bolstering the American economy.

415. *Id.*

416. Remarks by U.S. Trade Representative, Robert B. Zoellick, Global Trade and the Middle East: Reawakening a Vibrant Past, The World Economic Forum, Dead Sea, Jordan, (June 23, 2003), available at <http://www.ustr.gov/new/index2003.shtml>.

417. American Business Council of the Gulf Countries, *Promoting America's Business Interests in the GCC*, available at <http://www.abcg.org/about.html>.

418. *Id.*

419. *Id.*